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Wednesday
November 13, 1991

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 25, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-155]

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining an area in Los Angeles County in California because of the Mediterranean fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective November 5, 1991. Consideration will be given only to comments received on or before January 13, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-155. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.78, "Mediterranean Fruit Fly" (referred to below as the regulations). These regulations quarantine a portion of Los Angeles County, California, because of the Mediterranean fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses.

Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

Recent trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), a unit within the U.S. Department of Agriculture (USDA), reveal that a portion of Los Angeles County, California, is infested with the Mediterranean fruit fly. Specifically, on October 7, 1991, a mated female Medfly was found and, on October 11, 1991, a male Medfly was found. Both were found within a 3-square-mile area of Los Angeles County. Therefore, we are placing these areas under quarantine. The Mediterranean fruit fly is not known to occur anywhere else in the United States, except in Hawaii.

In cooperation with APHIS, officials of State agencies of California have begun an intensive Mediterranean fruit fly eradication program in the quarantined area of California. Also, as explained below, California has taken action to restrict the intrastate movement of certain articles from the quarantined area to prevent the spread of the Mediterranean fruit fly within California. However, it is also necessary to restrict the interstate movement of certain articles from the quarantined area to prevent the spread of the Mediterranean fruit fly to noninfested areas in other States. Accordingly, this document establishes Federal regulations, which are described below by section, to prevent the spread of the Mediterranean fruit fly.

Restrictions on Interstate Movement of Regulated Articles (Section 301.78)

Section 301.78 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (number 1) has been added to reference the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (Section 301.78-1)

Section 301.78-1 contains, for informational purposes, definitions of the following terms: "Administrator," "Animal and Plant Health Inspection Service," "Certificate," "Compliance Agreement," "Drip line," "Infestation," "Inspector," "Interstate," "Limited permit," "Mediterranean fruit fly," "Moved," "Person," "Quarantined area," "Regulated article" and "State."

Regulated Articles (Section 301.78-2)

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Mediterranean fruit fly if moved without restrictions from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.78-4 through 301.78-10.

Section 301.78-2 designates as regulated articles a number of berries, fruits, nuts, and vegetables, and soil within the drip line of plants that produce the berries, fruits, nuts, and vegetables. Based on research and experience, the articles listed in § 301.78-2 (a) and (b) as regulated articles are articles that are likely to cause the spread of the Mediterranean fruit fly. In addition, § 301.78-2(c) allows designation of any other article, product, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the Mediterranean fruit fly and notifies the person in possession of the article,

product, or means of conveyance that it is subject to the restrictions in the regulations. This provision for "any other article, product, or means of conveyance" allows an inspector who discovers a risk of spreading the Mediterranean fruit fly (e.g., a truck with Medfly pupae in cracks in the floorboards) to regulate the affected articles immediately by informing the person in possession of the article, product, or means of conveyance that it is being regulated.

Berries, fruits, nuts, or vegetables that are canned, dried, or frozen below −17.8 °C. (0 °F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under those conditions.

Quarantined Areas (Section 301.78–3)

As stated in § 301.78–3(a), it is necessary to quarantine areas in which the Mediterranean fruit fly has been found by an inspector, areas in which the Administrator has reason to believe the Mediterranean fruit fly is present, and areas the Administrator considers necessary to quarantine because of their inseparability for quarantine enforcement purposes from localities where Mediterranean fruit flies have been found.

Section 301.78–3(a) further provides that less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire State will prevent the interstate spread of the Mediterranean fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

In accordance with these criteria, we are designating as a quarantined area the following area in Los Angeles County, California:

Los Angeles County—That portion of the county in the Hancock Park area beginning at the intersection of La Cienega Boulevard and Sunset Boulevard; then east and southeast along Sunset Boulevard to its intersection with State Highway 110; then southwest along State Highway 110 to its intersection with Olympic Boulevard; then southeast along Olympic Boulevard to its intersection with Hill Street, then southwest along Hill Street to its intersection with Washington Boulevard; then southeast along Washington Boulevard to its intersection with San Pedro Street; then southwest along San Pedro Street to its intersection with Adams Boulevard; then southeast along Adams Boulevard to its intersection with Central Avenue; then south along Central Avenue to its intersection with Slauson Avenue; then west along Slauson Avenue to its intersection with La Cienega Boulevard; then north along La Cienega Boulevard to the point of beginning.

It is necessary to designate this portion of Los Angeles County as a quarantined area because it is an area in which the Mediterranean fruit fly has been found, or in which the Administrator has reason to believe the Mediterranean fruit fly is present, or an area necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

There does not appear to be any reason to designate any other quarantined areas in California other than the area specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Section 301.78–3(b) provides that the Administrator or an inspector may designate an area as a quarantined area temporarily, without publication in the **Federal Register**, if there is a basis for listing the area as a quarantined area under § 301.78–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent spread of the Mediterranean fruit fly before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (Sections 301.78–4 Through 301.78–10)

Section 301.78–4

Section 301.78–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.78–5 and 301.78–8, unless moved as prescribed in § 301.78–4(b).

Section 301.78–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, if it is moved through the quarantined area without stopping except for refueling or for traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by Mediterranean fruit flies, if the point of origin is indicated on the waybill, and if the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

Section 301.78–4(c) allows the Department to move regulated articles interstate without a certificate or limited permit for experimental or scientific purposes. However, the regulated articles must be moved in accordance with a permit issued by the Administrator, under conditions that prevent the spread of Mediterranean fruit fly.

Section 301.78–4 contains a footnote to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met for interstate movement.

Section 301.78–5

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is free of Mediterranean fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.78–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.78–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of Mediterranean fruit fly, has been treated under direction of an inspector in accordance with § 301.78–10, or comes from a premises of origin free from Mediterranean fruit fly; (2) will be moved through the quarantined area in an enclosed vehicle or is completely covered to prevent access by Mediterranean fruit flies; (3) will be moved in compliance with any additional emergency conditions the Administrator may impose, under

section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), to prevent the spread of the Mediterranean fruit fly; and (4) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

A footnote explains that the Secretary of Agriculture may, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions.

Section 301.78–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing (such as juicing, freezing, canning, or drying), and that the movement will not result in the spread of Mediterranean fruit fly.

Section 301.78–5(c) allows any person who has entered into and is operating under a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspector has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.78–5 (a) or (b).

Also, § 301.78–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.78–6

Section 301.78–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of subpart 301.78. Compliance agreements are provided for the convenience of persons who are involved in shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of subpart 301.78 and have agreed to comply with them.

Section 301.78–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact. This section contains a footnote to explain where compliance agreement forms can be obtained.

Sections 301.78–7, 301.78–8 and 301.78–9

Section 301.78–7 provides that any person who desires a certificate or limited permit to move regulated articles must, as far in advance of movement as possible (no less than 48 hours before the desired movement), request the services of an inspector to issue a certificate or limited permit. This provision ensures that persons desiring inspection services can obtain them before the intended movement date. A footnote explains how to contact the inspectors for inspection or how to obtain additional information from offices of the Animal and Plant Health Inspection Service.

Section 301.78–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill during the interstate movement. This section also provides that the certificate or limited permit may be attached to the consignee's copy of the waybill only if the certificate or limited permit and the waybill contain a sufficient description of the regulated article to identify the regulated article. This provision is necessary for enforcement purposes.

Section 301.78–9 explains the APHIS policy that services of an inspector that are needed to comply with the provisions of the regulations in subpart 301.78 are provided without cost during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Section 301.78–10

Section 301.78–10 identifies treatments for the Mediterranean fruit fly that are contained in the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations in 7 CFR part 300. Research has determined that these treatments would be adequate to destroy the Mediterranean fruit fly. The treatment schedules for bell pepper, tomato, and soil in § 301.78–10 are as follows:

(a) Fruits and vegetables.

(1) Bell Pepper.

(i) *Vapor Heat.* Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of bell pepper reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

(2) Tomato.

(i) *Fumigation.* Fumigate with methyl bromide at normal atmospheric pressure with 32 g/m^3 (2 lb/1000 ft^3) for 3½ hours at 21 °C. (70 °F.) or above.

(ii) *Vapor heat.* Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of tomato reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for a 8¾ hours, then immediately cool.

Note—Commodities should be tested by the shipper to determine each commodity's tolerance to the treatment before commercial shipments are attempted. The USDA is not liable for damages caused by this quarantine.

(b) Premises. A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with malathion bait spray. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mediterranean fruit fly. Determination of the time period must be based on day degrees. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by ground equipment at a rate of 2.4 ounces of technical grade malathion and 9.6 ounces of protein hydrolysate per acre.

(c) Soil: Soil within the drip area of plants that are producing or have produced the berries, fruits, nuts, and vegetables listed in § 301.78–2(a) of this subpart: Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to a depth of at least ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon

signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule restricts the interstate movement of regulated articles from the Hancock Park area of Los Angeles County in California. It appears that there is very little commercial activity in the quarantined area that may be affected by this rule. The small entities that may be affected appear to consist of approximately 200 retail/wholesale fruit stands, 10 nurseries, 300 fruit vendors, and 2 farmers markets. There are no growers in the quarantined area that would be affected.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities would be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0088.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart-Mediterranean Fruit Fly" (§§ 301.78 through 301.78–10) to read as follows:

Subpart—Mediterranean Fruit Fly

Sec.

301.78 Restrictions on interstate movement of regulated articles.
301.78–1 Definitions.
301.78–2 Regulated articles.
301.78–3 Quarantined areas.
301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.78–5 Issuance and cancellation of certificates and limited permits.
301.78–6 Compliance agreements and cancellation.
301.78–7 Assembly and inspection of regulated articles.
301.78–8 Attachment and disposition of certificates and limited permits.
301.78–9 Costs and charges.
301.78–10 Treatments.

Subpart—Mediterranean Fruit Fly

§ 301.78 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.78–1 Definitions.

In this subpart the following definitions apply:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Mediterranean fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart.

Day degrees. A mathematical construct combining average temperature over time that is used to calculate the length of a Mediterranean fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

[(Minimum Daily Temp + Maximum Daily Temp)/2] − 54° = Day Degrees

Drip line. The line around the canopy of a plant.

Infestation. The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

Interstate. From State into or through any other State.

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.78–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Mediterranean fruit fly. The insect known as Mediterranean fruit fly Ceratitis capitata (Wiedemann) in any stage of development.

Moved (Move, Movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Quarantined area. Any State, or any portion of a State, listed in § 301.78–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.78–3(b) of this subpart.

Regulated article. Any article listed in § 301.78–2(a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.78–2(c) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

§ 301.78–2 Regulated articles.

The following are regulated articles:

(a) The following berries, fruits, nuts, and vegetables.

Almond with husk (*Prunus dulcis (P. amygdalus)*)
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Black Myrobalan (*Terminalia cherbula*)
Cherries (sweet and sour) (*Prunus avium, P. cerasus*)
Citrus citron (*Citrus medica*)
Date (*Phoenix dactylifera*)
Fig (*ficus carica*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) (except smooth-skinned lemon of commerce that is cleaned and waxed)
Lime, sweet (*Citrus aurantiifolia*)
Loquat (*Eriobotrya japonica*)
Mandarin orange (*Citrus reticulata*) (tangerine)
Mango (*Mangifera indica*)
Mock orange (*Murraya exotica*)
Mountain apple (*Syzigium malaccense* (*Eugenia malaccensis*))
Natal plum (*Carissa macrocarpa*)
Nectarine (*Prunus persica* var. *nectarina*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Orange, calamondin (*Citrus reticulata* x. *Fortunella*)
Orange, Chinese (*Fortunella japonica*)
Orange, king (*Citrus reticulata x. C. sinensis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus reticulata* var. *Unshu*)
Papaya (*Carica papaya*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum frutescens, C. annuum*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Quince (*Cydonia oblonga*)
Rose Apple (*Eugenia jambos*)
Sour orange (*Citrus aurantium*)
Spanish cherry (*Brazilian plum*) (*Eugenia dombeyi* (*E. brasiliensis*))
Strawberry guava (*Psidium cattleianum*)
Surinam cherry (*Eugenia uniflora*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (Bestill) (*Thevetia peruviana*)

Any berries, fruits, nuts, or vegetables that are canned or dried or frozen below −17.8 °C. (0 °F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the berries, fruits, nuts, or vegetables listed in paragraph (a) of this section.

(c) Any other article, product, or means of conveyance, not covered by paragraphs (a) or (b) of this section, that presents a risk of spread of the Mediterranean fruit fly and an inspector notifies the person in possession of it that the article, product, or means of conveyance is subject to the restrictions of this subpart.

§ 301.78–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the Mediterranean fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Administrator will give a copy of this regulation along with a written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation shall be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

California

Los Angeles County. That portion of the county in the Hancock Park area beginning at the intersection of La Cienega Boulevard and Sunset Boulevard; then east and southeast along Sunsent Boulevard to its intersection with State Highway 110; then southwest along State Highway 110 to its intersection with Hill Street; then southwest along Hill Street to its intersection with Washington Boulevard; then southeast along Washington Boulevard to its intersection with San Pedro Street; then southwest along San Pedro Street to its intersection with Adams Boulevard; then southeast along Adams Boulevard to its intersection with Central Avenue; then south along Central Avenue to its intersection with Slauson Avenue; then west along Slauson Avenue to its intersection with La Cienega Boulevard; then north along La Cienega Boulvevard to the point of beginning.

§ 301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area [2]

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78–5 and 301.78–8 of this subpart;

(b) Without a certificate or limited permit, if: (1) The regulated article originated outside any quarantined area and is moved through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of Mediterranean fruit fly; and

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container. (Approved by the Office of Management and Budget under control number 0579–0088)

§ 301.78–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector [3] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.78–10 of this subpart; or

(ii) Based on inspection of the premises of origin, that the premises are free from the Mediterranean fruit fly; or

(iii) Based on inspection of the regulated article, that it is free of Mediterranean fruit fly; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd),[4] to prevent the spread of the Mediterranean fruit fly; and

(4) The regulated articles is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector [5] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that—

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Mediterranean fruit fly because life stages of the Mediterranean fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), to prevent the spread of the Mediterranean fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 301.78–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.[6]

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any

[3] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Administrator, c/o Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland, 20782.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested or infected by or contain plant pests.

[5] See footnote 3 to § 301.78–5(a).

[6] Compliance agreement forms are available without charge from the Administrator, c/o Permits Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.78–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.78–5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,[7] as far in advance of the desired interstate movement as possible (but no less than 48 hours before the desired interstate movement).

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.78–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be attached to the outside of the container containing the regulated article, attached to the regulated article itself if not in a container, or attached to the consignee's copy of the accompanying waybill: *Provided however,* that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 301.78–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

§ 301.78–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy Mediterranean fruit fly are authorized for use on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 301.1 of this chapter, "Materials incorporated by reference." The following treatment may be used for bell pepper, tomato, and soil:

(a) Fruits and vegetables.

(1) *Bell Pepper.*

(i) *Vapor Heat.* Heat by saturated water vapor at 44.4°C. (112 °F.) until approximate center of bell pepper reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

(2) *Tomato.*

(i) *Fumigation.* Fumigate with methyl bromide at normal atmospheric pressure with 32 g/m ^{3} (2 lb/1000 ft ^{3}) for 3½ hours at 21 °C. (70 °F.) or above.

(ii) *Vapor heat.* Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of tomato reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note.—Commodities should be tested by the shipper to determine each commodity's tolerance to the treatment before commercial shipments are attempted. The USDA is not liable for damages caused by this quarantine.

(b) Premises. A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with malathion bait spray. These treatments must take place at 6 to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mediterranean fruit fly. Determination of the time period must be based on day degrees. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by ground equipment at a rate of 2.4 ounces of technical grade malathion and 9.6 ounces of protein hydrolysate per acre.

(c) Soil: Soil within the drip area of plants that are producing or have produced the berries, fruits, nuts, and vegetables listed in § 301.78–2(a) of this subpart: Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to a depth of at least ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

Done in Washington, DC, this 5th day of November 1991.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–27273 Filed 11–12–91; 8:45 am]

BILLING CODE 3410–34–M

[7] See footnote 3 to § 301.78–5(a).

7 CFR Part 301

[Docket 91–149]

Oriental Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining portions of Los Angeles, Riverside, and San Bernardino Counties in California because of the Oriental fruit fly, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: Interim rule effective November 5, 1991. Consideration will be given only to comments received on or before January 13, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91–149. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart § 301.93, "Oriental Fruit Fly" (referred to below as the regulations). These regulations quarantine portions of Los Angeles, Riverside, and San Bernardino Counties in California because of the Oriental fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. The Oriental fruit fly can cause serious

economic losses. Heavy infestations can cause complete loss of crops. The short life cycle of this pest permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that portions of Los Angeles, Riverside, and San Bernardino Counties in California are infested with the Oriental fruit fly. Specifically, inspectors collected 37 male Oriental fruit flies and 1 female Oriental fruit fly in traps in portions of Los Angeles, Riverside, and San Bernardino Counties in California between September 20, and October 4, 1991. Therefore, we are placing these areas under quarantine. The Oriental fruit fly is not known to occur anywhere else in the continental United States.

Officials of State agencies of California have begun an intensive Oriental fruit fly eradication program in the quarantined area in California. Also, as explained below, California has taken action to restrict the intrastate movement of certain articles from the quarantined area to prevent the spread of the Oriental fruit fly. Accordingly, this document establishes Federal regulations, which are described below by section to prevent the spread of the Oriental fruit fly to other States.

Restrictions on Interstate Movement of Regulated Articles (Section 301.93)

Section 301.93 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (number 1) has been added to reference the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (Section 301.93–1)

Section 301.93–1 contains, for informational purposes, definitions of the following terms: "Administrator," "Animal and Plant Health Inspection Service," "Certificate," "Compliance Agreement," "Core area," "Day degrees," "Drip area," "Infestation," "Inspector," "Interstate," "Limited permit," "Moved (Move, Movement)," "Oriental fruit fly," "Person," "Quarantine area," "Regulated article," and "State."

Regulated Articles (Section 301.93–2)

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Oriental fruit fly if moved without restrictions from a quarantined area into or through a noninfested area. These articles, which are designated as regulated articles, may not be moved interstate from a quarantined area except in accordance with conditions specified in §§ 301.93–4 through 301.93–10.

Section 301.93–2 designates as regulated articles a number of fruits, nuts, vegetables, and berries, and soil within the drip line of plants that produce the fruits, nuts, vegetables, or berries. Based on research and experience, the regulated articles listed in § 301.93–2 (a) and (b) are articles that are likely to cause the spread of the Oriental fruit fly. In addition, § 301.93–2(c) allows designation of any other product, articles, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the Oriental fruit fly and notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations. The provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading Oriental fruit fly (e.g., a truck with Oriental fruit fly pupae in cracks in the floorboards) to regulate the affected articles immediately, by informing the person in possession of the product, article or means of conveyance that it is being regulated.

Fruits, nuts, vegetables, or berries that are canned, dried, or frozen below −17.8 °C. (O °F) are not included as regulated articles since the Oriental fruit fly could not survive under those conditions.

Quarantined Area (Section 301.93–3)

As stated in § 301.93–3(a), it is necessary to quarantine areas in which the Oriental fruit fly has been found by an inspector, areas in which the Administrator has reason to believe the Oriental fruit fly is present, and areas the Administrator considers necessary to quarantine because of their proximity to the Oriental fruit fly or their inseparability for quarantine enforcement purposes from localities where Oriental fruit flies have been found.

Section 301.93–3(a) further provides that less than an entire State will be designated as a quarantined area only if the Administrator determines that (1) the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire State will prevent the interstate spread of the Oriental fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

In accordance with these criteria, we are designating as a quarantined area portions of Los Angeles, Riverside, and San Bernardino Counties in California as follows:

Those portions of Los Angeles, Riverside, and San Bernardino Counties beginning at the intersection of Indian Hill Boulevard and Baseline Road; then, east along Baseline Road to its intersection with the Los Angeles-San Bernardino County Line; then, northeast along the Los Angeles-San Bernardino County line to its intersection with the Angeles National Forest boundary; then, east along the Angeles National Forest boundary to its intersection with the San Bernardino National Forest boundary; then east along the San Bernardino National Forest boundary to its intersection with the Rancho Cucamonga city limits; then, northeast, east, and southeast along the Rancho Cucamonga city limits line to its intersection with Interstate Highway 15; then, northeast along Interstate Highway 15 to its intersection with Sierra Avenue; then, south along Sierra Avenue to its intersection with Armstrong Road; then, southwest along Armstrong Road to its intersection with Valley Way; then, southwest along Valley Way to its intersection with State Highway 60; then, west along State Highway 60 to its intersection with Etiwanda Avenue; then, south along Etiwanda Avenue to its intersection with Riverside Avenue; then, west along Riverside Avenue to its intersection with Riverside Drive; then, west along Riverside Drive to its intersection with Central Avenue; then, north along Central Avenue to its intersection with Holt Boulevard; then, west along Holt Boulevard to its intersection with Indian Hill Boulevard; then, north along Indian Hill Boulevard to the point of beginning

It is necessary to designate these portions of Los Angeles, Riverside, and San Bernardino Counties in California as a quarantined area because it is an area in which the Oriental fruit fly has been found, or an area in which the Administrator has reason to believe the Oriental fruit fly is present, or an area

necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities where Oriental fruit fly has been found.

There does not appear to be any reason to designate any other quarantined areas in California other than the area specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles under this subpart.

Section 301.93–3(b) provides that the Administrator or an inspector may designate an area as a quarantined area temporarily without publication in the **Federal Register** if there is a basis for listing the area as a quarantined area under § 301.93–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent spread of the Oriental fruit fly before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (Sections 301.93–4 through 301.93–10)

Section 301.93–4

Section 301.93–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.93–5 and 301.93–8, unless moved as prescribed in § 301.93–4(b).

Section 301.93–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, if it is moved directly through the quarantined area without stopping except for refueling or for traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by Oriental fruit flies, if the point of origin is indicated on the waybill, and if the enclosed vehicle or enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

Section 301.93–4(c) allows the USDA to move regulated articles interstate without a certificate or limited permit for experimental or scientific purposes. However, the regulated articles must be moved in accordance with a permit issued by the Administrator, under conditions that prevent the spread of the Oriental fruit fly.

Section 301.93–4 contains a footnote (number 2) to remind persons that other applicable domestic plant quarantine and regulation requirements may need to be met for interstate movement.

Section 301.93–5

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g. the article is free of Oriental fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.93–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.93–5(a) provides that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of Oriental fruit fly, has been treated in accordance with § 301.93–10, or comes from premises of origin free from Oriental fruit fly and has not been exposed to Oriental fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of Oriental fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

A footnote (number 3) is added to provide information on the location of inspectors.

A footnote (number 4) explains that the Secretary of Agriculture may, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions.

Section 301.93–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing, and that the movement will not result in the spread of Oriental fruit fly.

Section 301.93–5(c) allows any person who has entered into and is operating under a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspector has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.93–5(a) or (b).

Also § 301.93–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.93–6

Section 301.93–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements may be entered into by any person engaged in growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of subpart 301.93. Compliance agreements are provided for the convenience of persons who are involved in frequent shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of subpart 301.93 and have agreed to comply with them.

Section 301.93–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact. This section contains a footnote (number 5) to explain where compliance agreement forms can be obtained.

Sections 301.93–7, 301.93–8, and 301.93–9

Section 301.93–7 provides that any person who desires a certificate or limited permit to move regulated articles must, as far in advance of movement as possible (but no less than 48 hours before the desired movement), request an inspector to issue a certificate or limited permit. This provision ensures that persons desiring inspection services can obtain them before the intended movement date. A footnote (number 3) explains how to contact the inspectors for inspection or how to obtain additional information from offices of

the Animal and Plant Health Inspection Service.

Section 301.93–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill during the interstate movement. This section requires, however, that the certificate or limited permit may be attached to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate, limited permit, or waybill to identify the regulated article. This provision is necessary for enforcement purposes.

Section 301.93–9 explains the APHIS policy that services of an inspector that are needed to comply with the regulations in subpart 301.93 are provided without cost during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Section 301.93–10

Section 301.93–10 sets forth treatments that qualify bell pepper, citrus and grapes, tomato, and soil for the issuance of a certificate as provided in § 301.93–5, and a treatment for premises on which regulated articles are grown. This section also identifies authorized treatments for the Oriental fruit fly that are contained in the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations at 7 CFR part 300. Research has determined that these treatments are adequate to destroy the Oriental fruit fly. Section 301.93–10 also includes a footnote (number 7) stating that some varieties of fruit may be injured by the approved treatments and that shippers should test treat before making commercial shipments.

The treatments for bell pepper, citrus and grapes, tomato, soil, and premises in § 301.93–10 are as follows:

(a) *Fruits and vegetables.*

(1) *Bell Pepper.*

(i) *Vapor Heat.* Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of bell pepper reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

(2) *Citrus and grapes.*

(i) *Fumigation plus refrigeration.* Fumigate at normal atmospheric pressure (chamber or tarpaulin, load not to exceed 80%) with 32 g/m³ methyl bromide at 21 °C. (70 °F.) or above, minimum gas concentrations 25 g/m³ at ½ hour, 18 g/m³ at 2 or 2½ hours, 17 g/m³ at 3 hours. Fumigate for a minimum of 2 hours. Then, aerate fruit at least 2 hours before refrigeration (but begin refrigeration no more than 24 hours after fumigation is completed). Refrigerate based upon fumigation exposure time listed in the table below:

Fumigation exposure time	Refrigeration	
	Days	Temperature
2 hours	4 days	0.55–2.7 °C. (33–37 °F.)
	11 days	3.33–8.3 °C. (38–47 °F.)
2½ hours	4 days	1.11–4.44 °C. (34–40 °F.)
	6 days	5.0–8.33 °C. (41–47 °F.)
	10 days	8.88–13.33 °C. (48–56 °F.)
3 hours	3 days	6.11–8.33 °C. (43–47 °F.)
	6 days	9.88–13.33 °C. (48–56 °F.)

(ii) *Refrigeration plus fumigation.* Refrigerate for 21 days at 0.55 °C. (33 °F.) or below, then fumigate at normal atmospheric pressure (chamber or tarpaulin, load not exceed 80%) with—

(A) 48 g/m³ (3 lb/1000 ft³) methyl bromide for 2 hours at 4.5 °C. (40–59 °F.), minimum gas concentration 44 g/m³ at ½ hour, 36 g/m³ at 2 hours; or

(B) 40 g/m³ (2–½ lb/1000 ft³) methyl bromide for 2 hours at 15.5–20.5 °C. (60–69 °F.), minimum gas concentration 36 g/m³ at ½ hour, 28 g/m³ at 2 hours; or

(C) 32 g/m³ (2 lb/1000 ft³) methyl bromide for 2 hours at 21–26 °C. (70–79 °F.), minimum gas concentration 30 g/m³ at ½ hour, 25 g/m³ at 2 hours.

(3) *Tomato.*

(i) *Fumigation.* Fumigate with methyl bromide at normal atmospheric pressure (chamber or tarpaulin, load not to exceed 80%) with 32 g/m³ (2 lb/1000 ft³) for 3½ hours at 21 °C. (70 °F.) or above.

(ii) *Vapor heat.* Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of tomato reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

(b) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with malathion bait spray. These treatments must take place at 6 to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Oriental fruit fly. Determination of the time period must be based on the day degrees model for Oriental fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 ounces of technical grade malathion and 9.6 ounces of protein hydrolysate per acre.

(c) *Soil.* Soil within the drip area of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.93–2(a) of this subpart: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the drip area with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

Emergency Action

Robert Melland, Acting Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this rule without prior opportunity for public comment. Immediate action is necessary to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with the Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This interim rule restricts the interstate movement of regulated articles from portions of Los Angeles, Riverside, and San Bernardino counties in California. It appears that there is very little commercial activity in the quarantined area that may be affected by this rule. The small entities that may be affected appear to consist of approximately 3 commercial growers of tomatoes, peppers, and apples; 60 nurseries; 1 lemon packing house; 2 olive processors; 2 hobbyist wineries; 140 fruit stands; 2 swap meets; and 80 growers with a total of 600 acres of citrus and grapes.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the States of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*) and have been assigned OMB control number 0579–0088.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Oriental fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended to read as follows:

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17., 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Oriental Fruit Fly" (§§ 301.93 through 301.93–10) to read as follows:

Subpart—Oriental Fruit Fly

Sec.

301.93 Restrictions on interstate movement of regulated articles.
301.93–1 Definitions.
301.93–2 Regulated articles.
301.93–3 Quarantined areas.
301.93–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.93–5 Issuance and cancellation of certificates and limited permits.
301.93–6 Compliance agreements and cancellation.
301.93–7 Assembly and inspection of regulated articles.
301.93–8 Attachment and disposition of certificates and limited permits.
301.93–9 Costs and charges.
301.93–10 Treatments.

Subpart—Oriental Fruit Fly

§ 301.93 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.93–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Oriental fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between the Animal and Plant Health Inspection Service and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart.

Core area. The 1 square mile area surrounding each property where Oriental fruit fly has been detected.

Day degrees. A mathematical construct combining average temperature over time that is used to calculate the length of an Oriental fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

[(Minimum Daily Temp + Maximum Daily Temp)/2] − 54° = Day Degrees

Drip Area. The area under the canopy of a plant.

Infestation. The presence of the Oriental fruit fly or the existence of circumstances that make it reasonable to believe that the Oriental fruit fly is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document, in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is eligible for interstate movement in accordance with § 301.93–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Moved (Move, Movement). Shipped, offered for shipment, received for transportation or transported, carried, or allowed to be moved, shipped, transported, or carried by any means.

Oriental fruit fly. The insect known as Oriental fruit fly (*Bactrocera dorsalis* (Hendel)) in any stage of development.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Quarantined area. Any State, or any portion of a State, listed in § 301.93–3(c) of this subpart.

Regulated article. Any article listed in § 301.93–2 of this subpart or otherwise designated as a regulated article in accordance § 301.93–2(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.93–3(b) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

§ 301.93–2 Regulated articles.

The following are regulated articles:

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

(a) The following fruits, nuts, vegetables, and berries:

Akia (*Wikstromeia phyllyraefolia*)
Alexander laurel (*Calopyllum inophyllum*)
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Banana (*Musa paradisiaca* var. *sapientum*) (*Musa x paradisiaca*)
Banana, dwarf (*Musa nana*)
Barbados cherry (*Malpighia glabra*)
Bell pepper (*Capsicum annum*)
Brazil cherry (*Eugenia dombeyi*)
Breadfruit (*Artocarpus atilis*)
Cactus (*Cereus coerulescens*)
Caimitillo (*Chrysophyllum oliviforme*)
Cashew (*Anacardium occidentale*)
Cherimoya (*Anonna cherimola*)
Cherry, Catalina (*Prunus ilicifolia*)
Cherry, Portuguese (*P. lusitanica*)
Chile (*Capsicum annum*)
Coffee, Arabian (*Coffea arabica*)
Country gooseberry (*Averrhoa carambola*)
Cucumber (*Cucumis sativas*)
Custard apple (*Annona reticulata*)
Date palm (*Phoenix dactylifera*)
Dragon tree (*Dracena draco*)
Eggfruit tree (*Pouteria campechiana*)
Elengi tree (*Mimusops elengi*)
Fig (*Ficus carica*)
Gourka (*Garcinia celebica*)
Granadilla, sweet (*Passiflora ligularis*)
Grape (*Vitis spp.*)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*), (*P. littorale*), (*P. cattleianum*)
Imbu (*Spondias tuberosa*)
Jackfruit (*Artocarpus heterophyllus*)
Jerusalem cherry (*Solanum pseudocapsicum*)
Kitembilla (*Dovyalis hebecarpa*)
Kumquat (*Fortunella japonica*)
Laurel (*Calophyllum inophyllum*)
Lemon (*Citrus limon*)
Lime, key or Mexican (*Citrus aurantifolia*)
Lime, Persian (*Citrus latifolia*)
Lime, sweet (*Citrus limetioides*)
Longan (*Euphoria longan*)
Loquat (*Eriobotrya japonica*)
Lychee nut (*Lychee chinensis*)
Malay apple (*Eugenia malaccensis*)
Mammee apple (*Mammea americana*)
Mandarin orange (*Citrus reticulata*) (*tangerine*)
Mango (*Mangifera indica*)
Mangosteen (*Garcinia mangostana*)
Mock orange (*Murraya exotica*)
Mulberry (*Morus nigra*)
Myrtle, downy rose (*Rhodomyrtus tomentosa*)
Natal plum (*Crissa grandiflora*)
Nectarine (*Prunus persica* var. *nectarina*)
Oleander, yellow (*Thevetia peruviana*)
Orange, calamondin (*Citrus reticulata x. fortunella*)
Orange, Chinese (*Fortunella japonica*)
Orange, king (*Citrus reticulata x. C. sinensis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus reticulata* var. *Unshu*)
Oriental bush red pepper (*Capsicum frutescens abbbreviatum*)
Otaheite apple (*Spondias dulcis*)
Palm, syrup (*Jubaea spectabilis*)
Papaya (*Carica papaya*)
Passionflower (*Passiflora edulis*)
Passionflower, softleaf (*Passiflora mollissima*)
Passionfruit (*Passiflora edulis*) (*yellow lilikoi*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepino (*Solanum muricatum*)
Pepper, sweet (*Capsicum frutescens* var. *grossum*)
Persimmon, Japanese (*Diospyros kaki*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Prickly pear (*Opuntia megacantha*) (*Opuntia ficus indica*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Quince (*Cydonia oblonga*)
Rose apple (*Eugenia jambos*)
Sandalwood (*Santalum paniculatum*)
Sandalwood, white (*Santalum album*)
Santol (*Sandericum koetjape*)
Sapodilla (*Manilkara zapota*)
Sapodilla, chiku (*Manilkara zapota*)
Sapota, white (*Casimiroa edulis*)
Seagrape (*Coccoloba uvifera*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona muricata*)
Star apple (*Chryosophyllum cainito*)
Surinam cherry (*Eugenia uniflora*)
Tomato (*Lycopersicon esculentum*)
Tropical almond (*Terminalia catappa*) (*Terminalia chebula*)
Velvet apple (*Diospyros discolor*)
Walnut (*Juglans hindsii*)
Walnut, English (*Juglans regia*)
Wampi (*Citrus lansium*)
West Indian cherry (*Malpighia punicifolia*)
Ylang-Ylang (*Cananga odorata*)

Any fruits, nuts, vegetables, or berries that are canned or dried or frozen below −17.8 °C. (0 °F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section.

(c) Any other product, article, or means of conveyance not covered by paragraphs (a) or (b) of this section that an inspector determines presents a risk of spread of the Oriental fruit fly and notifies the person in possession of it that the product, article, or means of conveyance is subject to the restrictions of this subpart.

§ 301.93–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing quarantined areas. The Administrator will give written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The area described below is designated as a quarantined area:

California

Los Angeles, Riverside, and San Bernardino Counties

Those portions of Los Angeles, Riverside, and San Bernardino Counties beginning at the intersection of Indian Hill Boulevard and Baseline Road; then, east along Baseline Road to its intersection with the Los Angeles-San Bernardino County Line; then, northeast along the Los Angeles-San Bernardino County line to its intersection with the

Angeles National Forest boundary; then, east along the Angeles National Forest boundary to its intersection with the San Bernardino National Forest boundary; then, east along the San Bernardino National Forest boundary to its intersection with the Rancho Cucamonga city limits; then, northeast, east, and southeast along the Rancho Cucamonga city limits line to its intersection with Interstate Highway 15; then, northeast along Interstate Highway 15 to its intersection with Sierra Avenue; then, south along Sierra Avenue to its intersection with Armstrong Road; then, southwest along Armstrong Road to its intersection with Valley Way; then, southwest along Valley Way to its intersection with State Highway 60; then, west along State Highway 60 to its intersection with Etiwanda Avenue; then, south along Etiwanda Avenue to its intersection with Riverside Avenue; then, west along Riverside Avenue to its intersection with Riverside Drive; then, west along Riverside Drive to its intersection with Central Avenue; then, north along Central Avenue to its intersection with Holt Boulevard; then, west along Holt Boulevard to its intersection with Indian Hill Boulevard, then, north along Indian Hill Boulevard to the point of beginning.

§ 301.93-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions: [2]

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.93-5 and 301.93-8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside of any quarantined area and is moved directly through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Oriental fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of Oriental fruit fly; and,

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container. (Approved by the Office of Management and Budget under control number 0579-0088)

§ 301.93-5 Issuance and cancellation of certificates and limited permits.

(a) An inspector [3] will issue a certificate for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated in accordance with § 301.93-10 of this subpart; or

(ii) Based on inspection of the premises of origin, or treatment of the premises of origin in accordance with § 301.93-10(c) of this subpart, the premises are free from Oriental fruit flies and the regulated article has not been exposed to Oriental fruit fly; or

(iii) Based on inspection of the regulated article, it is free of Oriental fruit fly; and

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); [4] to prevent the spread of the Oriental fruit fly; and

(3) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

[3] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories. Information concerning these offices may also be obtained from the Administrator, c/o Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested or infected by or contain plant pests.

(1) The regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Oriental fruit fly because life stages of the Oriental fruit fly will be destroyed by the specified handling, utilization, or processing;

(2) The regulated article is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); [4] to prevent the spread of the Oriental fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person engaged in growing, handling, or moving regulated articles provided the person is operating under a compliance agreement. A person operating under a compliance agreement may execute a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may execute a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing,

stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 301.93–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the interstate movement of regulated articles under this subpart.[5]

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decison. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing shall be adopted by the Administrator.

§ 301.93–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.93–5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector [6] as far in advance of the desired interstate movement as possible (but no less than 48 hours before the desired interstate movement).

(b) The regulated article must be assembled at the place and in the manner the inspector designated as necessary to comply with this subpart.

[5] Compliance agreement forms are available without charge from the Permits Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, and from local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

[6] See footnote 3 at § 301.93–5a.

§ 301.93–8 Attachment and disposition of certificates and limited permits.

(a) A certificate of limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be attached to the outside of the container containing the regulated article, attached to the regulated article itself if not in a container, or attached to the consignee's copy of the accompanying waybill: *Provided however,* that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate, limited permit, or waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 301.93–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

§ 301.93–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment manual to destroy Oriental fruit fly are approved for use on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference". The following treatments can be used for bell pepper, citrus and grape, tomato, premises, and soil:

(a) *Fruits and vegetables.*[7]

(1) *Bell Pepper.*

(i) *Vapor Heat.* Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of bell pepper reaches 44.4 °C (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

(2) *Citrus and grapes.*

(i) *Fumigation plus refrigeration.* Fumigate at normal atmospheric pressure (chamber or tarpaulin, load not to exceed 80%) with 32 g/m³ methyl bromide at 21 °C. (70 °F.) or above, minimum gas concentrations 25 g/m³ at ½ hour, 18 g/m³ at 2 or 2½ hours, 17 g/m³ at 3 hours. Fumigate for a minimum of 2 hours. Then, aerate fruit at least 2 hours before refrigeration (but begin refrigeration no more than 24 hours after fumigation is completed). Refrigerate based upon fumigation exposure time listed in the table below:

Fumigation exposure time	Refrigeration	
	Days	Temperature
2 hours	4 days	0.55–2.7 °C.(33–37 °F.)
	11 days	3.33–8.3 °C.(38–47 °F.)
2½ hours	4 days	1.11–4.44 °C.(34–40 °F.)
	6 days	5.0–8.33 °C.(41–47 °F.)
	10 days	8.88–13.33 °C.(48–56 °F.)
3 hours	3 days	6.11–8.33 °C.(43–47 °F.)
	6 days	P9.88–13.33 °C.(48–56 °F.)

(ii) *Refrigeration plus fumigation.* Refrigerate for 21 days at 0.55 °C.(33 °F.) or below, then fumigate at normal atmospheric pressure (chamber or tarpaulin, load not to exceed 80%) with—

(A) 48 g/m³ (3 lb/1000 ft³) methyl bromide for 2 hours at 4.5 °C. (40–59 °F.), minimum gas concentration 44 g/m³ at ½ hour, 36 g/m³ at 2 hours; or

(B) 40 g/m³ (2½ lb/1000 ft³) methyl bromide for 2 hours at 15.5–20.5 °C. (60–69 °F.), minimum gas concentration 36 g/m³ at ½ hour, 28 g/m³ at 2 hours; or

(C) 32 g/m³ (2 lb/1000 ft³) methyl bromide for 2 hours at 21–26 °C. (70–79 °F.), minimum gas concentration 30 g/m³ at ½ hour, 25 g/m³ at 2 hours.

(3) *Tomato.*

(i) *Fumigation.* Fumigate with methyl bromide at normal atmospheric pressure (chamber or tarpaulin, load not to exceed 80%) with 32g/m³ (2 lb/1000 ft³) for 3½ hours at 21 °C. (70 °F.) or above, minimum gas concentration 26 g/m³ at ½ hour, 14 g/m³ at 4 hours.

(ii) *Vapor heat.* Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of tomato reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

(b) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with malathion bait spray. These treatments must take place at 6 to 10-day intervals.

[7] Some varieties of fruit may be injured by approved treatments. The USDA is not liable for damages caused by this quarantine. Commodities should be tested by the shipper to determine each commodity's tolerance before commercial shipments are attempted.

starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Oriental Fruit Fly. Determination of the time period must be based on the day degrees model for Oriental fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 ounces of technical grade malathion and 9.6 ounces of protein hydrolysate per acre.

(c) Soil. Soil within the drip area of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.93–2(a) of this subpart: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the drip area with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

Done at Washington, DC, this 5th day of November, 1991.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–27274 Filed 11–12–91; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

RIN 3150–AE05

Revision of Fee Schedules; 100% Fee Recovery; Clarification of Size Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the payment of annual fees to clarify the provisions that identify the size standards used to determine whether an NRC licensee would qualify as a "small entity" under the Regulatory Flexibility Act for the purpose of paying a reduced annual fee. This clarification is necessary because the size standards presented in the regulations did not clearly indicate the complete range of size standards adopted by the NRC.

EFFECTIVE DATE: November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7211.

SUPPLEMENTARY INFORMATION: On July 10, 1991 (56 FR 31472), the NRC published a final rule amending 10 CFR parts 170 and 171 as required by Public Law 101–508, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year 1991 and the four succeeding years through license fees. In order to reduce the impact of the increase in fees imposed on small entities, the NRC imposed a maximum annual fee of $1,800 for each category for those licensees who qualify as small entities under its size standards.

On December 9, 1985 (50 FR 50241), the NRC adopted size standards it would use to determine whether an NRC licensee would be considered a small entity for the purpose of implementing requirements of the Regulatory Flexibility Act. The July 10, 1991, final rule repeated the size standards presented in the December 9, 1985, notice to inform affected licensees of the criteria to be used for determining whether or not they would be eligible for a reduced fee. However, neither the size standards general notice nor the fee schedule final rule clearly and completely identified the standards that were adopted by the NRC in December 1985.

On November 6, 1991 (56 FR 56671), the NRC published a general notice that restated its size standards to clearly identify the different classes of licensees affected and the standard that is applied to each class of licensee. Specifically, the general notice added the Regulatory Flexibility Act's definition of small governmental jurisdiction adopted by the NRC but not included in either the 1985 notice announcing the adoption of the size standards or in § 171.16 where the size standards were restated for the benefit of those licensees who are required to pay annual license fees. Also, to further improve clarity, the NRC reorganized the clarified size standards in a manner that conformed the presentation of its standards to the listing of definitions of small entities in the Regulatory Flexibility Act.

Because these amendments constitute a clarification of a matter involving agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of an administrative nature in that they clarify the size standards that NRC uses to determine a licensee's eligibility to pay a reduced annual fee.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The Commission has prepared a regulatory analysis for its final rule implementing the provisions of Public Law 101–508 that require the NRC to recover approximately 100 percent of its budget authority in Fiscal Year 1991 and the succeeding four years. The regulatory analysis was published as part of that final rule (56 FR 31497; July 10, 1991). This final rule does not alter the conclusions reached in that regulatory analysis. This final rule is intended to clarify the size standards that the NRC will use in determining whether a licensee may qualify as a small entity for the purpose of paying a reduced annual fee. Therefore, this final rule constitutes an administrative action that would not, of itself, have an economic impact on any class of licensees. By restating the size standards adopted by the NRC more clearly and explicitly, the final rule would allow a licensee to understand more easily the criteria to be used in determining whether the licensee would qualify as a small entity for the purpose of paying a reduced annual fee. Therefore the final rule may benefit both the NRC and its licensees. This constitutes the regulatory analysis for this final rule.

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 171

Annual charges, Byproduct material, Intergovernmental relations, Non-

payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material, Holders of certificates, registrations, or approvals, Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 171.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSES BY NRC

1. The authority citation for part 171 continues to read as follows:

Authority: Section 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1338 (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 171.16, paragraph (c)(1) is revised to read as follows:

§ 171.16 Annual Fees: Material licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) * * *

(1) A licensee qualifies as a small entity if it meets the following size standards.

(i) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(ii) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(iii) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(iv) A small educational institution is one that is—

(A) Supported by a qualifying small governmental jurisdiction; or

(B) One that is not state or publicly supported and has 500 employees or less.

(v) A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

* * * * *

Dated at Rockville, Maryland, this 25th day of October, 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–27231 Filed 11–12–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–82–AD; Amendment 39–8090; AD 91–24–04]

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes Equipped With Air Cruisers Slides

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires repetitive inspections of the forward door escape slides' velcro girt retaining straps that were installed in accordance with an existing AD. This amendment is prompted by reports of incorrectly routed and unserviceable straps. This condition, if not corrected, could result in unusable slides or jammed doors during an emergency evacuation.

EFFECTIVE DATE: December 17, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Terrell W. Rees, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2785. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737–300, –400, and –500 series airplanes, which requires repetitive inspections of forward door escape slides velcro girt retaining straps, was published in the **Federal Register** on May 20, 1991 (56 FR 23034).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule.

Several commenters recommended withdrawal of the proposed rule. These commenters presented the following arguments:

a. Improper positioning of the girt was resolved by Boeing Service Bulletin 737–25A1221 and related AD 88–07–07, Amendment 39–5884 (53 FR 9864, March 28, 1988);

b. The modification mandated by AD 88–07–07 will work as intended if utilized properly in service;

c. Emphasis on maintenance and training can satisfactorily address the improper utilization of the retaining straps in service;

d. The actual cost to industry of implementing the AD is excessive, and considerably exceeds the FAA's estimate presented in the preamble to the proposal; and

e. A design fix is imminent.

The FAA does not concur with the above rationales for withdrawing the proposal, for the following reasons:

a. This assertion is incorrect. AD 88–07–07 requires the implementation of Boeing Service Bulletin 737–25A1221, which describes installation of the velcro straps. These straps, however, were later found to be subject to misrouting and lack of maintenance in service. The intent of the requirements of this AD is to preclude these problems in service.

b. The FAA concurs with this statement; however, it does not concur that this is justification for withdrawing the proposed AD. As indicated above, service experience has demonstrated that the effectiveness of the straps has been substantially reduced; consequently, the unsafe condition originally addressed by AD 88–07–07 continues to exist.

c. Repeated attempts (ref. Boeing Service Letter 737–SL–25–44, dated March 22, 1989; and Boeing All-Operator Telex 7272–90–3242, dated May 21, 1990) to correct a widespread lack of maintenance and/or failure to comply with placarded strap-routing instructions among many major carriers, as mandated by the AD 88–07–07, indicate that this approach has thus far failed, and no evidence has been offered to suggest that it will now work if tried yet again.

d. The FAA's estimate of cost was determined in accordance with a standard practice of considering the cost of one inspection cycle only, and as is normally done, accounts for direct costs only. These methods are employed because it is not possible to accurately predict the length of time during which the repetitive inspections will be required before a terminating fix is

approved, nor is it possible to accurately predict the varying overhead costs of different operators. The cost factor addressed by several commenters may be considerably less than anticipated, due in part to FAA concurrence with extended airworthiness inspection intervals over those proposed, as discussed below, and clarifications, also discussed below, with regard to minimizing the impact of required strap routing inspections during normal operations. The FAA does not consider the scope or projected cost of this AD, especially as revised and clarified, to approach the criteria governing "major" rules.

e. The FAA does not consider it prudent to withhold this AD action merely because the process for developing a terminating action fix is characterized as "ongoing." Three previous redesign attempts have been proposed since February 23, 1990, and were found to be unacceptable. Any fix which may eventually be approved as terminating action will be identified as an alternative method of compliance with this AD.

One commenter requested that the proposed rule be changed to revise the repetitive inspection interval from "prior to each flight" to "once per day," or alternatively, demonstrate that training procedures have adequately addressed installation concerns. The FAA concurs in part with this commenter. Straps that are not routed in accordance with AD 88-07-07 can result in an unsafe condition. Since some operators had erroneously trained their cabin crews to route the straps contrary to the AD's instructions, the FAA considers it necessary to assure safety by checking the routing of the straps prior to each flight, especially during a retraining process. The FAA considers retraining to be a difficult process, and may not be immediately effective. With respect to assuring the airworthy condition of the velcro, the FAA concurs that after the initial assessment to re-establish airworthiness, repetitive inspections to assure continued airworthiness may be accomplished on a more infrequent basis. The AD has been revised, therefore, to require the follow-on repetitive inspections at 200 flight-hour intervals.

Another commenter requested that the FAA revise the instructions for determining the condition of velcro to clarify that peeling the velcro apart for an assessment is not necessary and may contribute to the accelerated aging that has, in part, prompted this AD in the first place. The FAA concurs with the observation that peeling velcro apart to assess its airworthiness may in fact, over time, contribute to degrading its airworthiness. It is not the expectation, however, that this action would always be deemed necessary by those making the assessment. During the investigation for developing this AD, the FAA noted that some velcro strap installations were obviously ineffective, being discolored, dirty, and curled up; in extreme cases, velcro straps were found hanging loose because they would not support their own weight, let alone the girt material intended to be supported. Those are the conditions targeted by this AD, and straps exhibiting these conditions require immediate replacement. Other installations that have not yet degraded to the point where they obviously require replacement may be effectively evaluated by performing a subjective pull test, without actually peeling apart the velcro. In any event, by concurring with the previous commenter's proposal to extend the interval between inspections, the FAA considers that this is unlikely to be a significant problem.

One commenter requested that the proposed rule be revised to accommodate those operators who have not failed to maintain or operate the subject velcro straps properly. The FAA does not concur that such revision of the proposal is practical. The FAA has noted the widespread "non-observance" of the requirements of AD 88-07-07, in that the correct implementation, utilization, and maintenance of the required installation apparently have not been followed at all times. The FAA has not been able to assess whether such "non-observance" is deliberate or is due to lack of specificity of instructions; however, the situation has resulted in the continuing existence of the originally identified unsafe condition. The FAA has elected to pursue a positive course of action that will ensure the widest possible compliance. Recognizing the lack of success in recent attempts by the manufacturer to encourage compliance through training and maintenance activity (as discussed previously), the FAA considers that its best recourse in addressing this situation is the issuance of an AD that affects all U.S. operators.

One commenter requested that the rule define those personnel who are considered acceptable for performing the required inspections. Proposed paragraph (a) makes reference to the "flight crew" as such qualified personnel; the commenter requested clarification as to whether it is intended that the "cabin crew" (flight attendants) or "cockpit crew" perform the proposed inspections, and whether such personnel could be qualified to perform inspections. Additionally, this commenter was concerned that appropriate personnel may not always be available to non-maintenance stations and that formal documentation of compliance (on the maintenance log) would not always be feasible under this scenario. The FAA concurs that clarification is necessary. The FAA intended that "cabin crew" be specifically included as personnel authorized to accomplish the required inspections; paragraph (a) of the final rule has been revised to indicate this clarification. Extension of the repetitive inspections to 200 flight-hour intervals will alleviate the commenter's concerns regarding availability of personnel to conduct the required inspections. For the efficient accomplishment of the required strap routing inspections prior to each flight, it is anticipated that most operators will use cabin crew (flight attendants), who will be specifically trained to assure maintenance of proper velcro strap routing in accordance with the AD placard instructions of AD 88-07-07, as an additional step to be associated with their current door-arming duties. Proposals for satisfactorily documenting compliance with this AD should be presented to the cognizant PMI for approval.

One foreign operator indicated that its airplanes had been modified in a manner other than that required by AD 88-07-07. The FAA infers that this commenter is referring to modifications of the forward door Air Cruisers escape slides that may have been accomplished in lieu of the velcro straps required by AD 88-07-07. With that particular modification installed, the requirements of this proposed AD are not applicable. In view of this, the FAA has revised the applicability of the final rule to specify that only airplanes previously modified in accordance with AD 88-07-07 are affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 816 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 439 airplanes of U.S.

registry will be affected by this AD, that it will take approximately 0.5 manhour per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,073 per inspection cycle.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-24-04. **Boeing.** Amendment 39-8090. Docket 91-NM-82-AD.

Applicability: Model 737-300, 737-400, and 737-500 series airplanes; equipped with Air Cruisers forward door escape slides modified in accordance with Boeing Service 737-25A1221, dated December 17, 1987, or later FAA-approved revisions; certificated in any category. *Compliance:* Required as indicated, unless previously accomplished.

To prevent a jammed door or an escape slide deployed in an unusable position during an emergency evacuation, either of which may be caused by inadequately maintained or misrouted girt retaining straps, accomplish the following:

(a) Within 30 days after the effective date of this AD, establish operating procedures, approved by the FAA Principal Maintenance Inspector (PMI), for the forward doors to include the requirements specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, and thereafter comply with those procedures. The procedures required by paragraphs (a)(1) and (a)(2) must be accomplished by qualified and trained mechanics. The procedures required by paragraph (a)(3) may be accomplished by qualified and trained members of the flight crew or cabin crew. The training program to implement the procedures required by this paragraph must be approved by the FAA PMI. Methods for documentation of compliance with the following procedures must be approved by the FAA PMI.

(1) Prior to the next flight after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, inspect the condition of the girt retaining straps at the forward doors.

(2) Replace, prior to further flight, worn or aged velcro whose grip strength will no longer hold the girt retaining straps in position.

(3) Prior to the next flight after the effective date of this AD, and thereafter prior to each flight, inspect the routing of the girt retaining straps at the forward doors, and reroute straps that are found not to be routed in accordance with the placarded instructions installed in accordance with AD 88-07-07 (Amendment 39-5884), on the inboard face of the slide compartment.

(b) The actions required by paragraph (a) of this AD may be terminated upon installation of a modification that has been approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39-8090, AD 91-24-04) becomes effective December 17, 1991.

Issued in Renton, Washington, on October 31, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-27224 Filed 11-12-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-225-AD; Amendment 39-8096; AD 91-24-10]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires incorporation of an operational procedure into the FAA-approved Airplane Flight Manual (AFM) to address uncommanded spoiler deployments on final approach. This action also requires identification and replacement of failed spoiler Power Control Actuators (PCA) in the event of an uncommanded spoiler deployment, prior to further flight. This amendment is prompted by reports of single uncommanded asymmetric spoiler deployments at flaps 25 and 30 caused by failed spoiler PCAs. This condition, if not corrected, could reduce the ability to maintain lateral control of the airplane.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The FAA has received a total of 35 reports of single uncommanded asymmetric spoiler deployments on 15 separate Boeing Model 757 series airplanes. All of these incidents occurred on final approach after selecting flaps 25 or 30. Uncommanded spoiler deployment incidents involved an Engine Indicating and Crew Alerting System (EICAS) advisory message "SPOILERS" with an amber caution light "SPOILERS," and required aileron deflection to counteract roll (40 degrees of control wheel input was recorded in several cases). The cause of these incidents has been determined to be spoiler PCA blocking/thermal relief valve seal flange failures and spoiler PCA trunnion seal bypasses. Both of these conditions allow hydraulic retract pressure leakage to return, such that inadequate hydraulic pressure is available to prevent aerodynamic spoiler panel float. The aerodynamic effect on the airplane, whether it be airplane roll or unusual vibration, will

be different, depending upon which spoiler panel floats. Failure of a second spoiler PCA on one wing with flaps 25 or 30 selected could result in the inability to maintain lateral control of the airplane.

In order to ensure safe flight with spoiler PCAs, which are susceptible to failure, operational procedures are necessary to require immediate retraction to flaps 20 and use of flaps 20 and $V_{ref}20$ for landing in the event of an uncommanded spoiler deployment on final approach. Additionally, failed spoiler PCAs must be identified and replaced prior to further flight. Aerodynamic lift forces on the spoiler panels are significantly increased when the flaps are extended beyond the flaps 20 position. Therefore, reduction of flap setting to flaps 20 from flaps 25 or 30 decreases the upward aerodynamic loading on the spoiler PCA, which reduces the spoiler deflection and resultant roll upset.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires an addition to the FAA-approved AFM to require immediate retraction to flaps 20 and use of flaps 20 and $V_{ref}20$ for landing in the event of an uncommanded spoiler deployment on final approach, in order to ensure adequate lateral control. Additionally, this AD requires identification and replacement of failed spoiler PCAs in the event of an uncommanded spoiler deployment.

This is considered interim action. Design modifications have been identified which will increase the thickness of the blocking/thermal relief valve seal flanges and replace unnotched trunnion seals with notched trunnion seals. These design modifications will correct the addressed problems, but have not yet been approved by the FAA and are not yet available for release. When such modifications are approved and available to operators, the FAA may consider further rulemaking to require their installation.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-24-10. **Boeing:** Amendment 39-8096. Docket No. 91-NM-225-AD.

Applicability: Model 757 series airplanes, line position 001 through 408, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To reduce the risk associated with uncommanded spoiler deployments caused by failed spoiler Power Control Actuators (PCA), accomplish the following:

(a) Within 10 days after the effective date of this AD, incorporate the following procedures into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD into the AFM.

"If, upon selection of flap 25 or 30, the SPOILERS EICAS message is observed, uncommanded airplane roll is encountered, or sustained control wheel displacement is required, immediately retract flaps to 20 and use flaps 20 and $V_{ref}20$ for landing. Select the ground proximity flap override switch to override."

(b) If, upon selection of flap 25 or 30, the SPOILERS EICAS message is observed, the SPOILERS caution light illuminates, or uncommanded airplane roll is encountered, prior to further flight, determine if a spoiler PCA fault ball is displayed on any of the spoiler control modules. If a spoiler fault ball is displayed, prior to further flight, identify the failed spoiler PCA pair and replace both spoiler PCAs, unless the direction of the roll upset is known, in which case only the spoiler PCA in the wing of the roll direction must be replaced. Any spoiler PCA that has been removed in accordance with this paragraph must not be installed on any airplane until the spoiler PCA is modified in accordance with a procedure approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) Modification of all spoiler PCAs on an airplane in accordance with a procedure approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate, constitutes terminating action for the requirements of this AD for that airplane.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39-8096, AD 91-24-10) becomes effective December 2, 1991.

Issued in Renton, Washington, on November 4, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-27225 Filed 11-12-91; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Administrative Authority and Policy

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1204 by revising paragraphs in §§ 1204.501, 1204.503, and 1204.504 to reflect the current organization position and office titles. These sections establish various delegations of authority to, and designations of, NASA officials acting on behalf of the Agency

to carry out prescribed functions of NASA.

EFFECTIVE DATE: November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Anthony Cuticchia, (202) 453–1964.

SUPPLEMENTARY INFORMATION: NASA is revising the following: Section 1204.501(a); § 1204.503(b), (f)(3)(i)(D), (f)(3)(ii), (g), and (i); and § 1204.504(a), (e)(3)(ii)(B), (e)(3)(iii), (f), and (h) to reflect the current organizational position and office titles. Since these revisions involve only Agency and management procedures, no public comment period is required.

The National Aeronautics and Space Administration has determined that: (1) This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of entities.

(2) This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings and facilities, Government contracts, Government employees, Government procurement, Grant programs, science and technology, Intergovernmental relations, Labor unions, Security measures, Small businesses, Real estate management.

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

For reasons set out in the preamble, 14 CFR part 1204 is amended as follows:

1. The authority citation for 14 CFR part 1204 subpart 5 continues to read as follows:

Authority: 42 U.S.C. 2473.

2. Section 1204.501 is amended by revising paragraph (a) to read as follows:

§ 1204.501 Delegation of authority—to take actions in real estate and related matters.

(a) *Delegation of authority.* The Associate Administrator for Management Systems and Facilities and the Director, Facilities Engineering Division, are delegated authority, in accordance with applicable laws and regulations, and subject to conditions imposed by immediate superiors, to:

* * * * *

3. Section 1204.503 is amended by revising paragraphs (b), (f)(3)(i)(D), (f)(3)(ii), (g), and (i) to read as follows:

§ 1204.503 Delegation of authority to grant easements.

* * * * *

(b) *Delegation of authority.* The Associate Administrator for Management Systems and Facilities and the Director, Facilities Engineering Division, are delegated authority to take actions in connection with the granting of easements.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(D) A determination by the Associate Administrator for Management Systems and Facilities, the Director, Facilities Engineering Division, or the appropriate Director of the Field Installation that the interests of the national space program, the national defense, or the public welfare require the termination of the easement; and a 30-day notice, in writing, to the grantee that the determination has been made.

(ii) That written notice of the termination shall be given to the grantee, or its successors or assigns, by the Associate Administrator for Management Systems and Facilities, the Director, Facilities Engineering Division, or the appropriate Director of the Field Installation, and that termination shall be effective as of the date of the notice.

* * * * *

(g) *Waivers.* If, in connection with a proposed granting of an easement, the Director of a Field Installation determines that a waiver from any of the restrictions in paragraph (f) of this section is appropriate, authority for the waiver may be requested from the Associate Administrator for Management Systems and Facilities or the Director, Facilities Engineering Division.

* * * * *

(i) *Distribution of documents.* One copy of each document granting an easement interest under this authority, including instruments executed by the Corps of Engineers, will be forwarded for filing in the Central Depository for Real Property Documents to: National Aeronautics and Space Administration, Facilities Operations and Maintenance Branch (Code JXG), Facilities Engineering Division, Washington, DC 20546.

4. Section 1204.504 is amended by revising paragraphs (a), (e)(3)(ii)(B), (e)(3)(iii), (f), and (h) to read as follows:

§ 1204.504 Delegation of authority to grant leaseholds, permits, and licenses in real property.

(a) *Delegation of authority.* The National Aeronautics and Space Act of 1958, as amended, authorizes NASA to grant leaseholds, permits, and licenses in real property. This authority is delegated to the Associate Administrator for Management Systems and Facilities and the Director, Facilities Engineering Division.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(B) A determination by the Associate Administrator for Management Systems and Facilities, the Director, Facilities Engineering Division, or the Director of the Field Installation concerned that the interests of the national space program, the national defense, or the public welfare require the termination of the interest granted; and a 30-day notice, in writing, to the grantee that such determination has been made.

(iii) That written notice of termination shall be given to the grantee, or its successors or assigns, by the Associate Administrator for Management Systems and Facilities, the Director, Facilities Engineering Division, or the Director of the Field Installation concerned, and that termination shall be effective as of the date specified by such notice.

* * * * *

(f) *Waivers.* If, in connection with a proposed grant, the Director of a Field Installation determines that a waiver from any of the restrictions set forth in paragraph (e) of this section is appropriate, a request may be submitted to the Associate Administrator for Management Systems and Facilities or the Director, Facilities Engineering Division.

* * * * *

(h) *Distribution of Documents.* One copy of each document granting an interest in real property, including instruments executed by the Corps of Engineers, will be forwarded for filing in the Central Depository for Real Property Documents to: National Aeronautics and Space Administrator, Facilities Operations and Maintenance Branch (Code JXG), Facilities Engineering Division, Washington, DC 20546.

Dated: October 7, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91–27206 Filed 11–12–91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AA 82

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 13, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198). The stay was subsequently extended (54 FR 35639, August 29, 1989; 55 FR 24070, June 13, 1990; 55 FR 32616, August 10, 1990; 55 FR 51698, December 17, 1990; 56 FR 10377, March 12, 1991; 56 FR 26909, June 12, 1991; 56 FR 37650, August 8, 1991).

On July 15, 1991, OSHA published a proposal to resolve several remaining issues on formaldehyde, including those raised by the stayed paragraphs (56 FR 32302). The public was given until August 14, 1991 to comment on the proposal. OSHA is completing its analysis of the comments and developing a final response. Consequently the stay is being extended for an additional 90 days so that OSHA may complete this process. While this stay is in effect, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) will be effective until February 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington DC 20210.

This action is taken pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

§ 1910.1048 [Stayed in part]

Therefore, 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) is stayed until February 4, 1992.

Signed at Washington, DC, this 5th day of November, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 91-27238 Filed 11-12-91; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-4029-6]

Arkansas; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Review of immediate final rule; response to public comments.

SUMMARY: The State of Arkansas applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) reviewed Arkansas' application and made a decision, subject to public review and comment, that Arkansas' hazardous waste program revision satisfied all of the requirements necessary to qualify for final authorization. As such, EPA published an Immediate Final Rule on September 18, 1991, for a 30-day public review and comment period. EPA received eleven comments by the close of business October 18, 1991. One comment addressed technical corrections necessary regarding the State Analog citations of State regulations and analysis of the State's small quantity generator exclusions. Ten comments dealt with citizen opposition to the final authorization. Today's publication is EPA's response to the comments received regarding this program revision authorization.

DATES: This response to the public comments received regarding final authorization for Arkansas affirms the immediate final decision previously published and notifies the public that the final authorization shall be effective on November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Regional Authorization Coordinator, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6760.

SUPPLEMENTARY INFORMATION:

Response to Public Comments

A. Technical Corrections

The Arkansas Department of Pollution Control & Ecology (ADPC&E) submitted a comment containing technical corrections to the State Analog chart at 56 FR 47154-47156, listing the State regulations that are equivalent to the rules promulgated to the Federal RCRA implementing regulations in 40 CFR parts 260 through 266, 268, 270, 124 and 144 that were published in the **Federal Register** through April 22, 1988. Many of the dates cited in that chart were incorrect and the following chart lists the correct dates of the State analogs that are being recognized as equivalent to the appropriate Federal requirements. The following chart replaces the previously published chart.

Federal citation	State analog
1. Definition of Solid Waste; Corrections, as amended, April 11, 1985 [50 FR 14216] and August 20, 1985 [50 FR 33541].	Arkansas Hazardous Waste Management Code (AHWMC) § 3a, as amended November 22, 1985, effective December 22, 1985.

Federal citation	State analog
2. Standards for Hazardous Waste Storage and Treatment Tank Systems; Correction (non-HSWA provisions), as amended, August 15, 1986 [51 FR 29430].	AHWMC § 3a(1), (2), (3), (5), (6) & (9), as amended September 25, 1987, effective October 22, 1987.
3. List (Phase 1) of Hazardous Constituents for Ground-Water Monitoring, July 9, 1987 [52 FR 25942].	AHWMC § 3a(5) & (9), as amended September 23, 1988, effective October 31, 1988.
4. Identification and Listing of Hazardous Waste, July 10, 1987 [52 FR 26012]	AHWMC § 3a(2), as amended September 23, 1988, effective October 31, 1988.
5. Amendments to Part B Information Requirements for Land Disposal Facilities, as amended September 9, 1987 [52 FR 33936].	AHWMC § 3a(9), as amended September 23, 1988, effective October 31, 1988.
6. Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, November 18, 1987 [52 FR 44314].	AHWMC § 3a(5) & (6), as amended September 23, 1988, effective October 31, 1988.
7. Hazardous Waste Miscellaneous Units, December 10, 1987 [52 FR 46946]	Arkansas Code of 1987, Annotated (Ark. Code Ann.) § 8-7-218 & 8-7-219(2), as amended February 24, 1989. AHWMC § 3a (1), (5), (6), (9), & § 12b(4), as amended September 23, 1988, effective October 31, 1988. Arkansas Underground Injection Control Code, § 3(a), effective May 4, 1989.
8. Financial Responsibility; Settlement Agreement, as amended, March 10, 1988 [53 FR 7740].	Ark. Code Ann. § 8-7-218 & 8-7-219(2), as amended February 24, 1989. AHWMC § 3a(5), (6), (9) & § 12b(4), as amended September 23, 1988, effective October 31, 1988.
9. Technical Correction; Identification and Listing of Hazardous Waste, April 22, 1988 [53 FR 13382].	AHWMC § 3a(2), as amended September 23, 1988, effective October 31, 1988.
10. Direct Action Against Insurers—as required by HSWA § 3004(t), November 8, 1984.	Ark. Code Ann. § 8-7-218(b)(2) & (c), as amended February 24, 1989.
11. Dioxin Waste Listing and Management Standards, January 14, 1985 [50 FR 1978].	AHWMC § 3a(2), (5), (6), (9) & § 13a(5), as amended November 22, 1985, effective December 22, 1985.
12. Fuel Labeling—as required by HSWA § 3004(r)(1), February 7, 1985	AHWMC § 3a(2) & (7), as amended November 22, 1985, effective December 22, 1985.
13. Paint Filter Test, April 30, 1985 [50 FR 18370]	AHWMC § 3a(1), (5), (6), (9) & § 13a(5), as amended November 22, 1985, effective December 22, 1985.
14. Prohibition of Liquids in Landfills—as required by HSWA § 3004(c), May 8, 1985.	Ark. Code Ann. § 8-7-209(a) (1), (5), (b) & § 8-7-218, as amended February 24, 1989. AHWMC § 3a(5), (6), (9) & § 13a(5), as amended November 22, 1985, effective December 22, 1985.
15. Expansions During Interim Status—Waste Piles—as required by HSWA § 3015(a), May 8, 1985.	Ark. Code Ann. § 8-7-216(b), (c), (d), (e) & (f), as amended February 24, 1989. AHWMC § 3a(9) & 12a(1-8), as amended November 22, 1985, effective December 22, 1985.
16. Expansions During Interim Status-Landfills and Surface Impoundments—as required by HSWA § 3015(b), May 8, 1985.	Ark. Code Ann. § 8-7-216(b), (c), (d), (e) & (f), as amended February 24, 1989. AHWMC § 3a(9) & 12a(1-8), as amended November 22, 1985, effective December 22, 1985.
17. Sharing of Information With the Agency for Toxic Substances and Disease Registry—as required by HSWA § 3019(b), July 15, 1985.	Ark. Code Ann. § 8-7-209(a)(2) & (10), as amended February 24, 1989.
18A. Small Quantity Generators	AHWMC § 3a, 12a & 16b, as amended November 22, 1985, effective December 22, 1985.
18C. Household Waste	AHWMC § 3a, as amended November 22, 1985, effective December 22, 1985.
18D. Waste Minimization	Ark. Code Ann. § 8-7-218(b) & (c), as amended February 24, 1989. AHWMC § 3a(3), (5), (6), (9), 12a(7) & (8) & 16b, c & d, as amended November 22, 1985, effective December 22, 1985.
18E. Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves.	Ark. Code Ann. § 8-7-209(a) (1), (3), (5), (6), (11), (b) & § 8-7-218, as amended February 24, 1989. AHWMC § 3a(5), (6) & 13a(5), as amended November 22, 1985, effective December 22, 1985.
18F. Liquids in Landfills	Ark. Code Ann. § 8-7-209(a) (1), (5), (b) & § 8-7-218, as amended February 24, 1989. AHWMC § 3a(1), (5), (6) & (9), § 13a(5), as amended November 22, 1985, effective December 22, 1985.
18G. Dust Suppression	AHWMC § 3a(7), as amended November 22, 1985, effective December 22, 1985.
18H. Double Liners	Ark. Code Ann. § 8-7-218, as amended February 24, 1989. AHWMC § 3a(5) & (6), as amended November 17, 1989, effective December 21, 1989.
18I. Ground-Water Monitoring	Ark. Code Ann. § 8-7-211 & § 8-7-218(b)(2), as amended February 24, 1989. AHWMC § 3a(5), 12c(3) & 17a, as amended November 17, 1989, effective December 21, 1989.
18J. Cement Kilns	AHWMC § 3a(2) & (7), as amended November 17, 1989, effective December 21, 1989.
18K. Fuel Labeling	AHWMC § 3a(2) & (7), as amended November 17, 1989, effective December 21, 1989.
18L. Corrective Action	Ark. Code Ann. § 8-7-218(b)(2), 8-7-218(c), 8-7-503(a)(1), 8-7-209(a)(6) & (8), 8-7-205(4), 8-7-218(b), 8-7-219, 8-7-502, 8-7-503(12) & 8-7-506, as amended February 24, 1989. AHWMC § 3a(5), (9) & § 12b(4), as amended November 17, 1989, effective December 21, 1989.
18M. Pre-construction Ban	Ark. Code Ann. § 8-7-211, as amended February 24, 1989. AHWMC § 3a(9), as amended November 17, 1989, effective December 21, 1989.
18N. Permit Life	Ark. Code Ann. § 8-7-220, as amended February 24, 1989. AHWMC § 3a(9), as amended November 17, 1989, effective December 21, 1989.
18O. Omnibus Provision	AHWMC § 3a(9) & 14, as amended November 17, 1989, effective December 21, 1989.
18P. Interim Status	Ark. Code Ann. § 8-7-216(b), (c), (d), (e) & (f), as amended February 24, 1989. AHWMC § 3a(9) & 12a(1-8), as amended November 17, 1989, effective December 21, 1989.
18Q. Research and Development Permits	AHWMC § 3a(9), as amended November 17, 1989, effective December 21, 1989.
18R. Hazardous Waste Exports	AHWMC § 3a(2), (3), (4) & (16), as amended November 17, 1989, effective December 21, 1989.
18S. Exposure Information	AHWMC § 3a(9), as amended November 17, 1989, effective December 21, 1989.
19. Listing of TDI, TDA, DNT, October 23, 1985 [50 FR 42936]	AHWMC § 3a(2), as amended November 22, 1985, effective December 22, 1985.
20. Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, November 29, 1985 [50 FR 49164], as amended April 13, 1987 [52 FR 11819].	Ark. Code Ann. § 8-7-203(6) & (7), as amended February 24, 1989. AHWMC § 2a(5), 3a(2), (5), (6) & (7), as amended September 25, 1987, effective October 22, 1987.

Federal citation	State analog
21. Listing of Spent Solvents, December 31, 1985 [50 FR 53315], as amended January 21, 1986 [51 FR 2702].	AHWMC § 3a(2), as amended September 26, 1986, effective November 1, 1986.
22. Listing of EDB Waste, February 13, 1986 [51 FR 5327]	AHWMC § 3a(2), as amended September 26, 1986, effective November 1, 1986.
23 Listing of Four Spent Solvents, February 25, 1986 [51 FR 6537]	AHWMC § 3a(2), as amended September 26, 1986, effective November 1, 1986.
24. Generators of 100 to 1000 kg Hazardous Waste, March 24, 1986 [51 FR 10146].	AHWMC § 3a, 12a & 16b, as amended September 26, 1986, effective November 1, 1986.
25. Codification Rule, Technical Correction (Paint Filter Test), May 28, 1986 [51 FR 19176].	AHWMC § 3a(1), (5), (6), (9) & 13a(5), as amended September 26, 1986, effective November 1, 1986.
26. Standards for Hazardous Waste Storage and Treatment Tank Systems (HSWA provisions), July 14, 1986 [51 FR 25422], as amended August 15, 1986 [51 FR 29430].	AHWMC § 3a(1), (2), (3), (5), (6) & (9) as amended September 26, 1986, effective November 1, 1986; as further amended September 25, 1987, effective October 22, 1987.
27. Biennial Report Correction, August 8, 1986 [51 FR 28556]	AHWMC § 3a(3), (5), (6), (9), 16b, c, d & d(1), 12a(7) & (8), as amended September 25, 1987, effective October 22, 1987.
28. Exports of Hazardous Waste, August 8, 1986 [51 FR 28664]	AHWMC § 3a(2), (3), (4) & § 16, as amended September 25, 1987, effective October 22, 1987.
29. Standards for Generators—Waste Minimization Certifications, October 1, 1986 [51 FR 35190].	AHWMC § 3a, 3a(2), (3), (5), (6), (9), 12a, 12a(7) & (8), 16, 16b-d, as amended September 25, 1987, effective October 22, 1987. Ark. Code Ann. § 8-7-218(b) & (c), as amended February 24, 1989.
30. Listing of EBDC, October 24, 1986 [51 FR 37725]	AHWMC § 3a(2), as amended September 25, 1987, effective October 22, 1987.
31. Land Disposal Restrictions, November 7, 1986 [51 FR 40572], as amended June 4, 1987 [52 FR 21010].	Ark. Code Ann. § 8-7-205(3), 8-7-209(a)(1), (3), (5), (6), (11), (b) & 8-7-215, 8-7-216, 8-7-218, 8-7-303 & § 8-7-308(4), as amended February 24, 1989. AHWMC § 3a(5), (6) & § 13a(5), as amended September 25, 1987, effective October 22, 1987.
32. California List Waste Restrictions, July 8, 1987 [52 FR 25760], as amended October 27, 1987 [52 FR 41295].	Ark. Code Ann. § 8-7-205(3), 8-7-209(a)(1), (3), (5), (6), (11) & (b), 8-7-215, 8-7-216 & § 8-7-218, as amended February 24, 1989. AHWMC § 3a(3), (5), (6), (8), (9) & § 13a(5), as amended September 23, 1988, effective October 31, 1988.
33. Exception Reporting for Small Quantity Generators of Hazardous Waste, September 23, 1987 [52 FR 35894].	AHWMC § 3a(3) & 16c(2), as amended September 23, 1988, effective October 31, 1988.
34A. Permit Application Requirements Regarding Corrective Action	AHWMC § 3a(9), as amended September 23, 1988, effective October 31, 1988.
34B. Corrective Action Beyond Facility Boundary	Ark. Code Ann. § 8-7-218(b)(2), (c) & 8-7-209(a)(8), as amended February 24, 1989. AHWMC § 3a(5), as amended September 23, 1988, effective October 31, 1988.
34C. Corrective Action for Injection Wells	AHWMC § 3a(5), (6) & (9), as amended September 23, 1988, effective October 31, 1988. Arkansas Underground Injection Control Code § 3(A), effective May 4, 1989.
34D. Permit Modification	AHWMC § 3a(9), as amended September 23, 1988, effective October 31, 1988.
34E. Permit as a Shield Provision	AHWMC § 3a(9), as amended September 23, 1988, effective October 31, 1988.
34G. Post-Closure Permits	AHWMC § 3a(9), as amended September 23, 1988, effective October 31, 1988.
35. State Availability of Information—as required by HSWA § 3006(f), November 8, 1984.	Ark. Code Ann. § 25-19-103(1), 25-19-105, 25-19-107, 8-4-222, 8-4-223, 5-4-226, 8-4-227, 8-222, 7-204(b) & (g) (Act 435 of 1991, enacted & effective March 11, 1991), 8-7-225(d) & 4-75-601(4), effective February 24, 1989. AHWMC § 6, as amended November 17, 1989, effective December 21, 1989. Memorandum of Agreement, United States Environmental Protection Agency, Region VI and Arkansas Department of Pollution Control & Ecology, effective September 6, 1991.

The second technical correction received from ADPC&E corrects the small quantity generator exclusion analysis made at 56 FR 47156, under paragraph B of the "Supplementary Information" section which states that Arkansas does not provide for any quantity exclusion. The correct interpretation of the Arkansas regulations is that Arkansas recognizes the quantity exclusion, and the categories of generator, small quantity generator, and conditionally exempt generator as per the Federal regulations. However, Arkansas does not provide for certain of the exemptions allowed for small quantity and conditionally exempt generators. Specifically, the disallowed exemptions include those at 40 CFR 262.20(e), 262.41 and 262.44 thus making the State regulations more stringent than the Federal program. The State regulations require that hazardous waste shipped away from the point of generation must be manifested; these wastes may be disposed of only in permitted or interim status treatment, storage, or disposal facilities, and generators must provide an annual report of hazardous waste generation to the State.

B. Authorization Comments

Ten comments received from individuals expressed their general opposition to allowing the ADPC&E to function as the State's lead environmental agency, and their opposition to this final authorization. The commentors requested that EPA continue its involvement in the State of Arkansas.

EPA will continue to be actively involved in the Hazardous Waste Program in Arkansas. EPA retains oversight authority of the delegated program and complete Federal authority over many regulations under the Hazardous and Solid Waste Amendments of 1984 (HSWA) to the RCRA. In addition, EPA retains Federal enforcement authority under RCRA §§ 3008, 7003, and 7013.

In order for Arkansas to be authorized for the HSWA provisions in this approval, it was required to demonstrate that it has the capability to administer a Hazardous Waste Program that would implement the proposed authorization, as well as effectively implement its currently authorized program. In the spirit of authorization, the ADPC&E and EPA have agreed to a plan for enhancing Arkansas' Hazardous Waste Program to ensure that it will be consistent with, equivalent to, and as stringent as the Federal requirements.

Throughout the past seven years, EPA has worked closely with the ADPC&E. The State has adequately demonstrated its capability to implement the Hazardous Waste Program in lieu of EPA.

EPA will continue its involvement and presence in the implementation and enforcement of ADPC&E's Hazardous Waste Program until such time in the

future that the State has been fully authorized for all applicable Federal laws and regulations and appropriately continuously demonstrated the capability to implement the Program to the satisfaction of EPA. Even then, under RCRA, EPA retains the authority to enforce against violators, even in authorized States, under RCRA §§ 3008, 7003, and 7013.

One of the commentors also addressed allegations of violations in regards to a treatment and disposal facility, Great Lakes Chemical Corporation (GLCC), in El Dorado, Arkansas. The commentor refers to incidents involving air emissions, grout spills, water discharges and a Consent Administrative Order (CAO) between the ADPC&E and GLCC.

The incidents referred to by the commentor do not specifically refer to RCRA or HSWA laws and regulations, or to laws and regulations which are a part of this final authorization. EPA, however, would like to state that to the best of EPA's knowledge, the facility has cleaned up all grout spills to neighboring properties immediately after the facility became aware of them, as indicated by the commentor. As to violations involving water discharges, the ADPC&E and EPA have investigated certain incidents, found violations and taken appropriate enforcement action against the facility. As to the CAO between ADPC&E and the facility, the commentor states that the order has been violated on several matters without giving specifics as to the violations. The ADPC&E has informed EPA that it is presently investigating certain matters that may fall within the parameters of the CAO. The ADPC&E has also informed EPA that the action dates in the CAO have been amended due to a finding and realization that they were not realistically achievable. The ADPC&E assures EPA that facility actions taken due to the CAO have improved the environment.

EPA and ADPC&E are in the process of issuing a joint RCRA and HSWA permit for operation and treatment to GLCC. This permit, upon issuance, will require the facility to comply with RCRA and HSWA, including specific requirements regarding hazardous air emissions. The permit will be enforced by both ADPC&E and EPA.

EPA has reevaluated its decision to approve this final authorization for the State's Hazardous Waste Program, and all the documentation, including the Authorization Application, the EPA Mid-year Evaluation Reports, EPA's End-of-Year Evaluation Reports, the Arkansas HSWA Capability Assessment and the mutually agreed-to-Arkansas Corrective Action Plan. EPA hereby affirms its decision to approve this final authorization. This authorization is effective November 18, 1991.

Dated: November 6, 1991.

Robert E. Layton, Jr.,

Regional Administrator.

[FR Doc. 91-27266 Filed 11-12-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 74, and 78

[Gen. Docket No. 90-54, Gen. Docket No. 80-113; FCC 91-301]

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, Private Operational-Microwave Fixed Service, and Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This Order on Reconsideration decides issues raised by various petitioners concerning the Report and Order, 55 FR 46006 (Oct. 31, 1990); *Erratum*, 55 FR 46513 (Nov. 5, 1990). The Report and Order was adopted to facilitate the development of wireless cable service as a viable competitor in the multichannel video marketplace, by revising the rules governing the various microwave radio channels that can be used collectively to provide wireless cable service. The Order on Reconsideration modifies and clarifies some decisions made in the Report and Order. Rule changes included new standards for: (1) Interference protection for Instructional Television Fixed Service (ITFS) stations which lease excess capacity to wireless cable operators; (2) ITFS excess capacity leasing requirements; (3) signal boosters of very low power; (4) interference analyses filed by Multichannel Multipoint Distribution Service (MMDS) applicants with regard to ITFS stations; (5) ITFS service requirements for MMDS applicants; and (6) Cable Antenna Relay Service (CARS) eligibility.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Common Carrier Bureau, 202-634-1772.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration in Gen. Dockets 90-54 and 80-113, adopted September 26, 1991, and released October 25, 1991. The complete text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at room 246, 1919 M Street, NW., Washington, DC 20554 (202-452-1422).

Paperwork Reduction Statement

The Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501, *et seq.*).

Title: Amendment of parts 1, 21, 43, 74 and 78 of the Commission's rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service.

OMB Number: 3060-0464.

Action: New and modified collections.

Respondents: Businesses (including small businesses); individuals or households.

Frequency of Response: On occasion.

1. Section 21.902(i)—Frequencies (ITFS Coordination Requirement).

(a) Engineering Analyses for ITFS construction permittees by MMDS lottery-winning applications and MMDS non-mutually-exclusive applications.

Estimated Annual Burden: 100 responses; 4000 hours on total industry, 40 hours each.

(b) Section 21.902(i)(3), (4) & (5)—ITFS Service Notice.

Estimated Annual Burden: 100 responses; 100 hours on total industry, 1 hour each.

2. Section 21.902(i)(6)—ITFS Petition to Deny.

Estimated Annual Burden: 35 responses; 700 hours on total industry, 20 hours each.

3. Section 21.913(g)—MDS Signal Booster Stations of very low power.

Estimated Annual Burden: 100 responses; 200 hours on total industry, 2 hours each.

4. Section 74.903—Interference.

a. Sections 74.903(b)(5) and (d). Engineering Analyses by ITFS applicants for ITFS stations that lease excess capacity for wireless cable operations.

Estimated Annual Burden: 40 responses; 800 hours on total industry, 20 hours each.

b. Section 74.903(e). Interference Protection Request for ITFS stations.

Estimated Annual Burden: 202 responses; 101 hours on total industry, ½ hour each.

5. Section 74.931(e)—ITFS Excess Capacity Leasing.

a. Section 74.931(e)(2). Advance Written Notice of ITFS Lessor's Recapture.

Estimated Annual Burden: 10 responses; 5 hours on total industry, ½ hour each.

6. Section 74.985—ITFS Signal booster stations.

a. Sections 74.985(b) and (c). Signal Boosters may not exceed service area.

Estimated Annual Burden: 20 responses; 40 hours on total industry, 2 hours each.

b. Section 74.965(g). ITFS Signal Boosters of very low power.

Estimated Annual Burden: 20 responses; 40 hours on total industry, 2 hours each.

Estimated public reporting burdens for the collections of information are indicated above. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to the Federal Communications Commission, Information Resources Branch, room 416, Paperwork Reduction Project (3060–0464), Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0464), Washington, DC 20503.

Synopsis of Order on Reconsideration

1. This Order on Reconsideration modifies and clarifies rules adopted in the Report and Order, adopted October 11, 1990, and released October 26, 1990 (see 55 FR 46006 (Oct. 31, 1990)), concerning MDS and ITFS stations used singularly or collectively to provide wireless cable service. After reexamining the issues raised in various petitions for reconsideration, it was decided that, with regard to most issues, various petitioners reiterated arguments presented and factors previously considered by the Commission. These requests for reconsideration were denied. For example, the reconsideration order does not rescind or narrow the scope of the cable ownership and leasing prohibitions of §§ 21.912 and 74.931(e).[1] Our rules still prohibit ownership interests in, control of, or leasing of MDS or ITFS capacity by cable television companies, directly or indirectly, in geographic areas which overlap the MDS or MMDS protected service areas, or are within 20 miles of an ITFS transmitter, for cable franchise areas lacking two or more competing cable television companies. See Report and Order, 55 FR 46006, 46006–15 (Oct. 31, 1990). In addition, the reconsideration order fails to rescind the new cut-off rule for MDS and MMDS applications, 47 CFR 21.914. It was determined that the rule was adopted and will be applied in a lawful manner. The reconsideration order also fails to enlarge the protected service area of MDS stations, as defined by 47 CFR 21.902(d). The Commission was not persuaded that it was in the public interest to make the requested enlargement at this time.

3. However, some rules were modified or clarified on reconsideration in order to enhance the availability of wireless cable operations, to facilitate competition in the multichannel video marketplace, while preserving the ability of ITFS stations to fulfill the function of providing educational programming for instructional use.

2. Specifically, this Order on Reconsideration adopts the following rule changes:

(a) Instructional Televisions Fixed Service (ITFS) stations which lease excess capacity to wireless cable operators are protected from harmful interference during hours of wireless cable operations.

(b) The ITFS excess capacity leasing rules were revised to give ITFS licensees greater flexibility in scheduling their programming. The elimination of time-of-day and day-of-week requirements allows the ITFS licensees to determine the weekly scheduling distribution of ITFS programming, while still requiring the ITFS licensee to provide 20 hours of ITFS programming per week per channel. All hours not used for ITFS programming may be leased to a wireless cable operator. The recapture requirement of an additional 20 hours per week per channel was revised to the extent that the ITFS lessor now must provide one year advance written notice to the wireless cable lessee.[2]

(c) A signal booster of very low power may be constructed and operated, prior to FCC authorization, if certain prescribed conditions are met.[3] This change will relieve ITFS licensees and wireless cable operators of regulatory and economic burdens, while at the same time preventing harmful interference to authorized facilities.

(d) In addition to the previously-existing requirement that Multichannel Multipoint Distribution Service (MMDS) applicants must file an interference analysis for each ITFS licensee, MMDS applicants now also must file an interference analysis for each ITFS construction permittee.

(e) The MMDS application requirements concerning ITFS stations were revised to reduce the number of interference analyses which must be prepared by MMDS applicants and reviewed by ITFS licensees and construction permittees. ITFS licensees and construction permittees must review, and possibly file objections to, interference analyses filed only by MMDS applicants who either win lotteries or file applications which are not mutually-exclusive. This eliminates the necessity to review interference analyses filed by all MMDS applicants. Thus, the number of interference analyses to be reviewed is substantially reduced.

(f) The Cable Antenna Relay Service (CARS) eligibility rules were revised to the limited extent to allow ITFS point-to-point operations on the E or F channels to migrate to CARS spectrum where CARS spectrum is suitable alternative spectrum. See 55 FR 46006, 46006–15 (Oct. 31, 1990).

Regulatory Flexibility Act Analysis

1. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rules will have a significant impact on a substantial number of small entities by easing the regulatory burden for microwave

[1] On September 26, 1991, in the Second Report and Order in this same rulemaking proceeding, the Commission also adopted some revisions to the rule provisions concerning ITFS cable prohibitions, and therefore, renumbered the rule subsection. As of January 2, 1992, the ITFS cable prohibitions will be found in 47 CFR 74.931 (h), (i), and (j).

[2] The reconsideration order, as requested, specifies that ITFS licensees are allowed to lease excess capacity to wireless cable operators in such a manner as to allow the wireless cable operator to use channel mapping technology. As requested, and in order to facilitate excess capacity leasing for wireless cable service, ITFS omnidirectional antenna proposals to provide lease wireless cable service will be considered.

[3] In the Second Report and Order in this same rulemaking proceeding, also adopted on September 26, 1991, the Commission is reallocating the Operational Fixed Service (OFS) H-channels to MDS. The Commission stated specifically in the Order on Reconsideration that an H-channel MDS licensee, may also apply for authorization to construct and operate a signal booster, including a low-power signal booster, and may use specific provisions adopted in the Order on Reconsideration concerning low-power signal boosters.

services which may be used for wireless cable operations.

2. The Secretary shall send a copy of this Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

Ordering Clauses

1. For the reasons set forth above, parts 1, 21, 74 and 78 of the Commission's rules are hereby amended as discussed herein and as shown below. *It is ordered,* That this Order of Reconsideration will be effective December 30, 1991.

2. *It is further ordered,* That the motion requesting stay of the effectiveness of the new MDS/MMDS cut-off rule is dismissed. *It is also further ordered,* That the untimely request for reconsideration filed by Hector Juan Figueroa is dismissed.

4. Accordingly, *it is ordered,* That pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 1.429(i) of the Commission's rules, 47 CFR 1.429(i), the Petitions for Reconsideration or Clarification filed in this proceeding are granted to the extent indicated herein, and in all other respects are denied.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 21

Communications common carriers, Domestic public fixed radio services.

47 CFR Part 74

Television broadcasting, Experimental, auxiliary, and special broadcast and other program distributional service.

47 CFR Part 78

Cable television, Cable television relay service.

Amendatory Text

Parts 1, 21, 74, and 78 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552; Sec. 3001(a), Pub. L. 101–239, 103 Stat. 2106, 47 U.S.C. 158, unless otherwise noted.

2. The authority citation for subpart G of part 1 is removed.

3. Section 1.1105 is amended by adding paragraph (7)(h) to read as follows:

§ 1.1105 Schedule of charges for common carrier services.

Action	FCC form No.	Fee amount	Fee type code	Address
• • •	•	•	•	• • •
(7) * * *				
(h) MDS Signal Booster:				
(i) Application	494	$50	CSB	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Certification of Completion of Construction	494A	$50	CCB	
• • •	•	•	•	• • •

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

4. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 602; 47 U.S.C. 552.

§ 21.901 [Amended]

5. Section 21.901 is amended by removing and reserving paragraph (d)(1).

6. Section 21.902 is amended by revising paragraph (f)(2), redesignating paragraphs (i) and (j) as (j) and (k), and by adding new paragraph (i), to read as follows:

§ 21.902 Frequency interference.

* * * * *

(f) * * *

(2) Adjacent channel interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal level. Harmful interference will be considered present when a free space calculation determines that this ratio is less than 0 dB. In the alternative, harmful interference will be considered present for an Instructional Television Fixed Service (ITFS) station constructed before May 26, 1983, when a free space calculation determines that this ratio is less than 10 dB, unless the license for a Multipoint Distribution Service station in the 2596–2690 MHz frequency band is conditioned on the proffer to the affected ITFS station licensee of equipment capable of providing a ratio of 0 dB or more at no expense to the ITFS station licensee, and also conditioned, if necessary, on installation of such equipment, absent a showing by the affected ITFS station licensee demonstrating good cause and that the proposed equipment will not provide a ratio of 0 dB or more or that installation of such equipment, at no expense to the ITFS station licensee, is not possible.

* * * * *

(i)(1) For each application for facilities in the 2596–2644 MHz frequency band filed on or after December 30, 1991, the applicant must submit an analysis demonstrating that operation of the applicant's transmitter will not cause harmful interference to any existing E-channel or F-channel Instructional Television Fixed Service (ITFS) station, licensed or with a construction permit authorized, with a transmitter site within 50 miles of the coordinates of the Multichannel Multipoint Distribution Service (MMDS) station's proposed transmitter site.

(i) In the alternative, an applicant for an MMDS station may submit a statement from the ITFS licensee or construction permittee stating that the ITFS licensee or construction permittee does not object to operation of the MMDS station.

(ii) In the alternative, an applicant for an MMDS station may submit an analysis demonstrating that there are no ITFS licenses or construction permittees, as described in paragraph (i)(1) of this section, within 50 miles of the

coordinates of the proposed transmitter site of the MMDS station.

(2) For each application described in paragraph (i)(1) of this section, the applicant must file the required analysis on or before the 60th day after public notice.

(i) For MMDS applications which participate in a lottery, this public notice described at paragraph (i)(2) of this section is the notice announcing the selection of the applicant's application by lottery for qualification review.

(ii) For MMDS applications which do not participate in a lottery, this public notice described at paragraph (i)(2) of this section is the notice announcing that the applicant's application is not mutually-exclusive with other MMDS applications.

(3) For each application described in paragraph (i)(1) of this section, the applicant must serve, by certified mail, return receipt requested, on or before the day the analysis described in paragraph (i)(1) of this section must be filed with the Commission, a copy of the analysis described in paragraph (i)(1) of this section, on each ITFS licensee or construction permittee described in paragraph (i)(1) of this section.

(4) For each application described in paragraph (i)(1) of this section, the applicant must file with the analysis described in paragraph (i)(1) of this section a certificate of service of the analysis as described in paragraph (i)(3) of this section;

(5) For each application described in paragraph (i)(1) of this section, the applicant must file, on or before the 120th day after the public notice as described in paragraph (i)(2) of this section, a written notice which contains the following:

(i) Caption—ITFS Service Notice;

(ii) Applicant's name, address, proposed service area and channel group;

(iii) A list of each ITFS licensee and construction permittee described in paragraph (i)(1) of this section;

(iv) A list of the date each ITFS licensee and construction permittee described in paragraph (i)(1) of this section received a copy of the analysis described in paragraph (i)(1) of this section, or a notation of lack of receipt by the ITFS licensee or construction permittee of a copy of the interference analysis on or before such 120th day, together with a description of its efforts for receipt by each such licensee or construction permittee lacking receipt of the analysis.

(6)(i) Notwithstanding the provisions of § 1.824(c) of this chapter and § 21.30(a)(4), for each application described in paragraph (i)(1) of this section, any ITFS licensee and any ITFS construction permittee described in paragraph (i)(1) of this section may file with the Commission on or before the 120th day after the public notice described in paragraph (i)(2) of this section, a petition to deny the MMDS application.

(ii) Except for the requirements as to the filing time deadline, this petition to deny must otherwise comply with the provisions of § 21.30.

(iii) In addition, this ITFS petition to deny must:

(A) Identify the subject MMDS application, including the applicant's name, station location, channel group, and application file number;

(B) Include a certificate of service demonstrating service on the subject MMDS applicant by certified mail, return receipt requested, on or before the 120th day after the MMDS public notice described in paragraph (i)(2) of this section;

(C) Include a demonstration that it made efforts to reach agreement with the MMDS applicant but was unable to do so;

(D) Include an engineering analysis that operation of the proposed MMDS station will cause harmful interference to its ITFS station;

(E) Include a demonstration, in those cases in which the MMDS applicant's analysis is dependent upon modification(s) to the ITFS facility, that the harmful interference cannot be avoided by the proposed substitution of new or modified equipment to be supplied and installed by the MMDS applicant, at no expense to the ITFS licensee or construction permittee; and

(F) Be limited to raising objections concerning the potential for harmful interference to its ITFS station or concerning a failure by the MMDS applicant to serve the ITFS licensee or construction permittee with a copy of the interference analysis described in paragraph (i)(1) of this section.

(iv) The Commission will presume an ITFS licensee or construction permittee described in paragraph (i)(1) of this section has no objection to operation of the MMDS station, if the ITFS licensee or construction permittee fails to file a petition to deny by the deadline prescribed in paragraph (i)(6)(i) of this section.

* * * * *

7. Section 21.913 is amended by adding paragraph (g) to read as follows:

§ 21.913 Signal booster stations.

* * * * *

(g) However, an MDS, MMDS, or ITFS licensee may install and commence operation of a signal booster station that has a maximum power level of −9 dBW EIRP and which does not extend service beyond the boundaries of an MDS station's protected service area or beyond an ITFS licensee's registered receive site, subject to the condition that for 60 days after authorization no objection or petition to deny is filed by an authorized cochannel or adjacent-channel ITFS, MDS, or MMDS station with a transmitter within 5 miles of the coordinates of the primary transmitter of the signal booster, if:

(1) An application on Form 494 or Form 330, with the required filing fee, is filed with the Commission within 48 hours of installation;

(2) Such application includes a certification that the maximum power level of the signal booster transmitter does not exceed −9 dBW EIRP;

(3) Such application includes a description of the signal booster technical specifications (including antenna gain and azimuth), the coordinates of the booster and receivers, and the street address of the signal booster;

(4) Such application includes a certification that no registered receiver of an ITFS E or F channel station, constructed prior to May 26, 1983, is located with a 1 mile radius of the coordinates of the booster, or in the alternative, a consent statement from the affected ITFS licensee;

(5) Such application includes a certification that no environmental assessment location as defined at § 1.1307 of this chapter is affected by installation and/or operation of the signal booster;

(6) Such application includes a certification of service of this application on each MDS, MMDS, and/or ITFS station licensee with protected service areas or registered receivers within a 5 mile radius of the coordinates of the booster;

(7) Such application includes a consent statement from each MDS, MMDS, or ITFS station licensee whose signal is repeated by the signal booster;

(8) Such application includes a demonstration that the proposed signal booster site is within the protected service area of the MDS/MMDS station, if the signal of an MDS or an MMDS station is repeated;

(9) Such application includes a demonstration that the power flux density at the edge of the MDS station's protected service area does not exceed −75.6 dBW/m², if the signal of an MDS station is repeated;

(10) Such application includes a certification that the antenna structure will extend less than 6.10 meters (20

feet) above the ground of natural formation or less than 6.10 meters (20 feet) above an existing manmade structure (other than an antenna structure); and

(11) Such application includes a certification that the MDS, MMDS, or ITFS licensee understands and agrees that in the event harmful interference is claimed by the filing of an objection or petition to deny, the licensee must terminate operation within two (2) hours of written notification by the Commission and must not recommence operation until receipt of written authorization to do so by the Commission.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

8. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4,303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

9. Section 74.903 is amended by revising paragraph (a)(2), adding paragraph (b)(5), and adding paragraphs (d) and (e) to read as follows:

§ 74.903 Interference.

(a) * * *

(2) Adjacent channel interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal level. Harmful interference will be considered present when a free space calculation determines that this ratio is less than 0 dB. In the alternative, harmful interference will be considered present for an Instructional Television Fixed Service (ITFS) station constructed before May 26, 1983, when a free space calculation determines that this ratio is less than 10 dB, unless the individual receive site under consideration has been subsequently upgraded with up-to-date reception equipment, in which case the ratio shall be less than 0 dB, or unless the license for an ITFS station is conditioned on the proffer to the affected ITFS station licensee of equipment capable of providing a ratio of 0 dB or more at no expense to the affected ITFS station licensee, and also conditioned, if necessary, on installation of such equipment, absent a showing by the affected ITFS station licensee demonstrating good cause and that the proposed equipment will not provide a ratio of 0 dB or more or that installation of such equipment, at no expense to the ITFS station licensee, is not possible. Absent information presented to the contrary, the Commission will assume that reception equipment installation occurred simultaneously with original station equipment.

* * * * *

(b) * * *

(5) An analysis of the potential for harmful interference within the protected service area, as defined at § 21.902(d) of this chapter, of any authorized or previously-proposed station(s) described at paragraph (d) of this section.

* * * * *

(d) Each authorized or previously-proposed applicant, construction permittee, or licensee who proposes to lease excess capacity to a "wireless cable" operator pursuant to § 74.931(e)(2) must be protected from harmful electrical interference for the hours of such transmissions within a protected service area as defined at § 21.902(d) of this chapter. Applicants are expected to cooperate fully and in good faith with an authorized or previously-proposed applicant, construction permittee, or licensee who leases or proposes to lease excess capacity to a "wireless cable" operator pursuant to § 74.931(e)(2), in attempting to resolve problems of potential interference to such operations before bringing the matter to the attention of the Commission.

(e) Each ITSF applicant, permittee, or licensee who wishes to claim the protection described at paragraph (d) of this section must request such protection in writing in its initial application for a new station, in an application amendment, or by modification application.

10. Section 74.931 is amended by revising paragraph (e) to read as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(e) A licensee may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a), (b), (c), and (d) of this section subject to the following conditions:

(1) If the time or capacity leased is not to be used for "wireless cable" operations, the licensee must preserve at least 40 hours per week, including at least 6 hours per weekday (Monday through Friday), excluding holidays and vacation days, for ITFS purposes on that channel. The 40-hour preservation may consist of airtime strictly reserved for ITFS use and not used for non-ITFS programming, or of time used for non-ITFS programming but subject to ready recapture by the licensee for ITFS use with no economic or operational detriment of the licensee. At least 20 hours per week of the preserved time on each channel must be used for ITFS programming, including at least 3 hours per weekday, excluding holidays and vacation days, except as provided in paragraph (e)(3) of this section. Only ITFS programming and preserved airtime scheduled between 8 a.m. and 10 p.m. Monday through Saturday, will qualify to meet these requirements.

(2) If the time or capacity leased is to be used for "wireless cable" operations, before leasing excess capacity on any one channel, the licensee must provide at least 20 hours per week of ITFS programming on that channel, except as provided in paragraph (e)(3) of this section. All hours not used for ITFS programming may be leased to a "wireless cable" operator. An additional 20 hours per week per channel must be reserved for recapture by the ITFS licensee for its ITFS programming, subject to one year's advance, written notification by the ITFS licensee to its "wireless cable" lessee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the ITFS licensee and the "wireless cable" lessee.

(3) For the first two years of operation, an ITFS entity may lease excess capacity if it provides ITSF programming at least 12 hours per channel per week, including up to four hours of ITFS usage per day.

(4) The licensee may schedule the ITFS programming and use automatic channel switching equipment so as to employ channel mapping technology to lease to a "wireless cable" operator. However, an ITFS applicant should request only as many channel as it needs to fulfill its educational requirements.

(5) All of the capacity available on any subsidiary channel of any authorized channel may be used for the transmission of material to be used by others.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation. A licensee operating as a common carrier is required to apply for the appropriate authorization and to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee.

Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(7) An ITFS applicant, permittee, or licensee may use an omnidirectional antenna to facilitate the leasing of excess capacity to "wireless cable" operators.

(8) Leasing activity may not cause unacceptable interference to cochannel and adjacent-channel operations.

* * * * *

11. Section 74.985 is revised in its entirety to read as follows:

§ 74.985 Signal booster stations.

(a) Authorizations for Instructional Television Fixed Service (ITFS) booster stations may be granted to an ITFS applicant, permittee or licensee, or to a third party with a fully-executed lease agreement with an ITFS applicant, permittee, or licensee. The eligibility requirements of § 74.932 will not apply to such third-party booster station applicants. A signal booster station may not extend service beyond a registered receive site of the primary ITFS station. No booster station may be authorized for retransmission of signals from an MDS, MMDS, or ITFS station without the written consent of the licensee of the station whose signals are retransmitted.

(b) In addition to the other application requirements of this Part and of Form 330, each application for a signal booster station that would retransmit an ITFS signal must include a demonstration that the proposed signal booster station will not transmit a signal to a receiver site that is beyond a previously-registered receive site of the primary ITFS station.

(c) In addition to the other application requirements of this part and of Form 330, each application for a signal booster station that would retransmit an ITFS signal must include a demonstration that the power flux density of the ITFS signal does not exceed -75.6 dBW/m^2 at the edge of a protected service area for the primary ITFS transmitter station, as defined by § 21.902(d) of this chapter.

(d) In addition to the other application requirements of this part and of Forms 494 and 330, each application for a signal booster station must include a demonstration that the proposed signal booster station will cause no harmful interference to cochannel or adjacent-channel, authorized or previously-proposed ITFS, MDS, or MMDS, stations with transmitters within 50 miles of the proposed booster station's transmitter site.

(e) In addition to the other application requirements of this part and of Forms 494 and 330, each application for a signal booster station must include a written consent statement of the licensee of each MDS, MMDS, and ITFS station whose signal is retransmitted.

(f) The output power of the signal booster transmitter station must not exceed 18 dBW EIRP.

(g) However, an MDS, MMDS, or ITFS licensee may install and commence operation of a signal booster station that has a maximum power level of -9 dBW EIRP and which does not extend service beyond the boundaries of an MDS station's protected service area or beyond an ITFS licensee's registered receive site, subject to the condition that for 60 days after authorization no objection or petition to deny is filed by an authorized cochannel or adjacent-channel ITFS, MDS, or MMDS station with a transmitter within 5 miles of the coordinates of the primary transmitter of the signal booster, if:

(1) An application on Form 494 or Form 330, with the required filing fee, is filed with the Commission within 48 hours of installation;

(2) Such application includes a certification that the maximum power level of the signal booster transmitter does not exceed -9 dBW EIRP;

(3) Such application includes a description of the signal booster technical specifications (including antenna gain and azimuth), the coordinates of the booster and receivers, and the street address of the signal booster;

(4) Such application includes a certification that no environmental assessment location as defined at § 1.1307 of this chapter is affected by installation and/or operation of the signal booster;

(5) Such application includes a certification of service of this application on each MDS, MMDS, and/or ITFS station licensee with protected service areas or registered receivers within a 5 mile radius of the coordinates of the booster;

(6) Such application includes a consent statement from each MDS, MMDS, or ITFS station licensee whose signal is repeated by the signal booster;

(7) Such application includes a demonstration that the proposed signal booster site is within the protected service area of the MDS/MMDS station, if the signal of an MDS or an MMDS station is repeated;

(8) Such application includes a demonstration that the proposed signal booster site will not transmit a signal to a receiver site that is beyond a previously-registered receive site of the primary ITFS station, if the signal of an ITFS station would be repeated.

(9) Such application includes a demonstration that the power flux density of the ITFS signal does not exceed -75.6 dBW/m^2 at the edge of a protected service area for the primary ITFS transmitter station, as defined by § 21.902(d) of this chapter.

(10) Such application includes a certification that the antenna structure will extend less than 6.10 meters (20 feet) above the ground or natural formation or less than 6.10 meters (20 feet) above an existing manmade structure (other than an antenna structure); and

(11) Such application includes a certification that the MDS, MMDS, or ITFS licensee understands and agrees that in the event harmful interference is claimed by the filing of an objection or petition to deny, the licensee must terminate operation within two (2) hours of written notification by the Commission and must not recommence operation until receipt of written authorization to do so by the Commission.

PART 78—CABLE TELEVISION RELAY SERVICE

12. The authority citation for part 78 continues to read:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 307, 308, 309.

13. Section 78.13 is amended by adding paragraph (e) to read as follows:

§ 78.13 Eligibility for license.

* * * * *

(e) Licensees, construction permittees, and applicants of channels in the Instructional Television Fixed Service (ITFS) as defined in § 74.901 if:

(1) The station is authorized or the application proposes authorization as a point-to-point operation; and

(2) Grant of a CARS license would allow displacement of any E or F channel of the ITFS point-to-point operation by a Multipoint Distribution Service (MDS) or Multichannel Multipoint Distribution Service (MMDS) applicant, conditional licensee, or licensee.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-27140 Filed 11-12-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 352

ACQUISITION REGULATION; PUBLICATION; CORRECTION

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: The Department of Health and Human Services is correcting its acquisition regulation which was published as a final rule in the **Federal Register** on Wednesday, October 23, 1991 (56 FR 54797).

EFFECTIVE DATE: November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Lanham (202) 245–8890.

SUPPLEMENTARY INFORMATION: The final rule at 56 FR 54797 included amendatory language of section 352.270–6. The amendatory language for amendment number 2 is corrected to read:

2. In section 352.270–6, the first sentence in paragraph (a) of the clause is amended by removing the comma after the word "publish" and by removing the phrase "and make available through accepted channels,".

Dated: November 5, 1991.

Terrence J. Tychan,

Acting Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 91–27179 Filed 11–12–91; 8:45 am]

BILLING CODE 4150–04–M

Proposed Rules

Federal Register
Vol. 56, No. 219
Wednesday, November 13, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the third quarter, July through September, of 1991. The agenda is issued to provide the public with information about NRC's rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 10, No. 3, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 275–2060 or (202) 275–2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–7758, toll-free number (800) 368–5642.

Dated at Bethesda, Maryland, this 28th day of October 1991.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 91–27232 Filed 11–12–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. 46494; Notice No. 91–20]

RIN 2105–AB47

Computer Reservation System (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is considering whether to readopt and modify its existing rules governing computer reservations systems (CRSs). The Department initiated this rulemaking because its existing CRS rules (14 CFR part 255) would have expired on December 31, 1990, unless extended by the Department. The Department later extended that date to November 30, 1991. The Department, however, will be unable to complete a rulemaking on whether new CRS rules should be adopted by November 30, 1991. The Department has tentatively determined that the existing rules should be maintained until May 31, 1992, to enable the Department to complete the CRS rulemaking.

DATES: Comments must be submitted on or before November 18, 1991.

ADDRESSES: Comments must be filed in room 4107, Docket 46494, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Late filed comments will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Thomas Ray or Gwyneth Radloff, Office of the General Counsel, 400 7th St., SW., Washington, DC 20590, (202) 366–4731 or 366–9305, respectively.

SUPPLEMENTARY INFORMATION:

Introduction

The Department's rules governing computer reservations systems (CRSs) operated in the United States, 14 CFR part 255, were originally adopted by the Civil Aeronautics Board (the "Board") in 1984, and by their terms would have expired on December 31, 1990, unless renewed by us. (When the Board ceased to exist on December 31, 1984, most of its remaining functions, including responsibility for the rules, transferred to us.)

We began this proceeding to consider whether we should readopt those rules and, if so, whether to modify them, by issuing an advance notice of proposed rulemaking requesting comments on these issues. Advance notice of proposed rulemaking, Computer Reservations Systems, 54 FR 38870 (September 21, 1989). Because we received a large number of comments raising a number of difficult economic and policy issues, we were unable to publish a notice of proposed rulemaking, much less complete the rulemaking, by December 31, 1990. We therefore extended the current rules' expiration date to November 30, 1991. 55 FR 53149 (December 27, 1990).

We issued a notice of proposed rulemaking (NPRM) early this year. 56 FR 12586 (March 26, 1991). We tentatively concluded that the rules should be readopted with several significant changes. We also asked for further information and analysis on several complex issues, such as the claim that the systems contain architectural bias giving their airline affiliates an unfair advantage in obtaining bookings from their travel agency subscribers.

Comments and reply comments on the NPRM were filed by the Justice Department, Michigan and a group of 17 states and territories, the European Civil Aviation Conference, the CRS vendors and the carriers controlling the CRSs (American, Covia, United, Worldspan, Delta, Northwest, TWA, and System One and Continental jointly), six other U.S. airlines (Alaska, America West, Midway, Pan American, Southwest, and USAir), 15 foreign airlines and airline groups (Aer Lingus, Air Canada, Air France, Alitalia, British Airways, KLM, LTU International, Lufthansa, the Orient Airlines Association, Sabena, SAS, Swissair, TAP, Varig, and Virgin Atlantic), the two major travel agency trade associations (the American Society of Travel Agents and the Association of Retail Travel Agents), the

United States Tour Operators Association, a number of travel agency and agent parties, Dallas-Fort Worth civic parties, a manufacturer of third-party software, the National Business Travel Association, several individuals, and the Competitive Enterprise Institute. The range of views presented by these parties runs from the position that no CRS rules are necessary to the position that much stronger rules than those proposed by our NPRM are necessary.

Northwest included with its reply comments a motion asking us to require the vendors to submit certain additional information on the reliability of each system's functionality and communications links for transactions on non-vendor carriers. We granted Northwest's motion because we concluded that the reliability information would help us evaluate the comments. Order 91-8-63 (August 30, 1991). The required information and the comments by other parties on it were filed within the next six weeks.

Need for Extending the Expiration Date

We will be unable to complete our rulemaking on whether the rules should be readopted, with or without changes, by November 30, 1991, the rules' current expiration date under § 255.10(b). The difficulty and number of the issues raised in the rulemaking have made it impossible for us to issue final rules by the end of this year. In addition, our decision to obtain additional information on CRS reliability and give other parties an opportunity to comment on that information has also kept us from meeting the November 30 deadline. As a result, we have tentatively determined to extend the rules' expiration date to May 31, 1992.

Keeping the current rules in force until this proceeding's completion will, by preserving the status quo, prevent the disruption that would otherwise occur if the rules were allowed to expire and if we thereafter adopted similar rules governing CRS operations. The vendors, other airlines, and travel agencies have been operating their businesses consistently with the rules and on the assumption that other firms would do the same. If the rules expired, the vendors might well change their methods of operation, which would probably require other firms to change their operating methods as well, even though we might well readopt CRS rules at a later point. Rather than create the possibility for such disruption, we believe that we would benefit the vendors, the airlines, the travel agencies, and the public by preserving the status quo until we determine whether CRS rules are still necessary and, if so, which ones.

We are therefore proposing to change the expiration date of the current rules from November 30, 1991, to May 31, 1992. We expect to be able to complete the rulemaking by May 31, 1992. Of course, we intend to complete this proceeding earlier if possible.

Comments on this proposed extension of the termination date will be due five days after publication of this notice. After considering the comments, we will issue a final rule. We find it necessary to provide only a five-day period for comments because a rule extending the termination date must be adopted by November 30. The short comment period should not prejudice any party, since parties have already had an opportunity to comment on the need for CRS rules by commenting on the NPRM (and the earlier advance notice of proposed rulemaking) and since any extension of the current rules would merely maintain the status quo. We also note that no one opposed the extension of the expiration date from December 31, 1990, to November 30, 1991, and that few parties in this proceeding contend that we should let the rules expire, although American, United, and Covia have asserted that CRS rules are unnecessary.

Regulatory Impact Analysis

Executive Order 12291 requires each executive agency to prepare a regulatory impact analysis for every "major rule". the Order defines a major rule as one likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The CRS regulations appear to be a major rule, since they would probably have an annual impact on the economy of $100 million or more.

Our proposal to change the current rules' termination date to May 31, 1992, would keep in force the existing rules on CRS operations. When the Board conducted its rulemaking, it included a tentative regulatory impact analysis in its notice of proposed rulemaking and make that analysis final when it issued its final rule. In addition, our NPRM contained such a regulatory impact analysis, although that analysis was largely directed at the proposals made by the NPRM. We believe that the Board's analysis, as modified by the NPRM's analysis, remains applicable to our proposal to extend the rules' expiration date and that no new regulatory impact statement appears to be necessary. However, we will consider comments from any parties on that analysis before we make our proposal final.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96-354) is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, would have a significant economic impact on a substantial number of small business entities.

Postponing the rules' termination date to May 31, 1992, will not modify the existing regulation of small businesses. The Board's notice of proposed rulemaking contained an initial regulatory flexibility analysis on the impact of the rules, and the Board discussed the comments on that analysis in its final rule. The Board's analysis appears to be valid for our proposed extension of the rules' termination date. Accordingly, we will adopt the Board's analysis as our tentative regulatory flexibility statement. We will consider any comments filed on that analysis when we decide whether to adopt this proposal.

Paperwork Reduction Act

This proposal will not impose any collection-or-information requirements and so is not subject to the Paperwork Reduction Act, Public Law 96-511, 44 U.S.C. Chapter 35.

Federalism Implications

The rule proposed in this notice will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that the proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects for 14 CFR Part 255

Air Carriers, Antitrust, Reporting and Recordkeeping Requirements.

Accordingly, the Department of Transportation proposes to amend 14 CFR part 255, Carrier-owned Computer Reservation Systems, as follows:

PART 255—CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

1. The authority citation for Part 255 continues to read as follows:

Authority: Secs. 102, 204, 404, 411, 419 1102; Pub. L. 85–726 as amended, 72 Stat. 740, 743, 760, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502.

2. Section 255.10 is revised to read as follows:

§ 255.10 Review and termination.

Unless extended, this rule shall terminate on May 31, 1992.

Issued in Washington, DC on: November 7, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91–27417 Filed 11–8–91; 2:23 pm]

BILLING CODE 4910–62–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–29915; File No. S7–25–91; International Series Release No. 338]

RIN 3235–AF44

Proposed Temporary Risk Assessment Rules

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission is extending the date by which comments on Securities Exchange Act Release No. 29635 (August 30, 1991); 56 FR 44014, (September 6, 1991) which proposed temporary risk assessment rules 17h–1T and 17h–2T must be submitted from November 5, 1991, to December 2, 1991. The Commission has received a request to extend the comment period and believes that an extension of time is appropriate, given the novel nature of the proposed risk assessment rules.

DATES: Comments must be received on or before December 2, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–25–91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Roger G. Coffin, (202) 272–7375, Division of Market Regulation, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Exchange Release No. 29635, the Commission proposed for comment Rules 17h–1T and 17h–2T, which together with proposed Form 17–H, would set forth the risk assessment recordkeeping and reporting requirements for associated persons of registered broker-dealers. Based on the novel issues presented in the release, the Securities Industry Association has requested an extension of the comment period. The Commission herein is extending the comment period for Securities Exchange Act Release No. 29635 from November 5, 1991, to December 2, 1991.

Dated: November 7, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–27252 Filed 11–12–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–44–90]

RIN 1545–A090

Low-Income Housing Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code. The proposed regulations discuss the application of the not-for-profit rules of section 183 to activities entitling taxpayers to claim low-income housing credits.

DATES: Written comments and requests for a public hearing must be received by January 13, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, (Attn: CC:CORP:T:R (PS–44–90), room 5228), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:CORP:T:R (PS–44–90), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman, (202) 377–6349 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations providing certain rules for the low-income housing credit of section 42, which was enacted by section 252 of the Tax Reform Act of 1986 (Pub. L. 99–514), and amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), the Revenue Reconciliation Act of 1988 (Pub. L. 101–239), and the Revenue Reconciliation Act of 1990 (Pub. L. 101–508). Since the enactment of the low-income housing credit, taxpayers have raised questions concerning the application of the not-for-profit rules of section 183 to low-income housing credit activities. The proposed regulations address this issue.

Explanation of Provision

The current regulations under sections 42 and 183 do not provide guidance as to whether the not-for-profit restrictions of section 183 apply to activities that allow taxpayers to claim the low-income housing credit under section 42. The low-income housing credit under section 42 replaced a variety of tax preferences available under prior law for low-income rental housing because the credit was thought to be a more efficient mechanism for encouraging the provision of such housing. See S. Rep. No. 313, 99th Cong., 2d Sess. 758–59 (1986), 1986–3 (Vol. 3) C.B. 758–59.

Although no explicit reference is contained in section 42 or its legislative history regarding its interaction with section 183, the legislative history of the low-income housing credit indicates that Congress contemplated that tax benefits such as the credit and depreciation would be available to taxpayers investing in low-income housing, even though such an investment would not otherwise provide a potential for economic return.

Therefore, to reflect the congressional intent in enacting section 42, the Internal Revenue Service proposes to exercise its regulatory authority under section 42 (n) to provide that section 183 will not be used to limit or disallow the credit. The proposed regulation in § 1.42–4 (a) provides in the case of a qualified low-income building with respect to which the low-income housing credit under section 42 is allowable, section 183 does not apply to disallow losses, deductions, or credits attributable to the ownership and operation of the building. The foregoing rule will be effective for buildings placed in service after December 31, 1986. Notwithstanding the foregoing rule, however, losses, deductions, or credits attributable to the

ownership and operation of a qualified low-income building with respect to which the low-income housing credit under section 42 is allowable may be limited or disallowed under other provisions of the Code or principles of tax law. See, e.g., sections 38(c), 163(d), 465, 469; *Knetsch* versus *United States*, 364 U.S. 361 (1960) ("sham" or "economic substance" analysis); and *Frank Lyon Co.* versus *Commissioner*, 435 U.S. 561 (1978) ("ownership" analysis).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request by any person who timely submits written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Pass-throughs and Special Industries), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.37–1 Through 1.44A–1

Credits, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.42–4 is also issued under 26 U.S.C. 42(n) * * *

Para. 2. New § 1.42–4 is added to read as follows:

§ 1.42–4 Application of not-for-profit rules of section 183 to low-income housing credit activities.

(a) *Inapplicability to section 42.* In the case of a qualified low-income building with respect to which the low-income housing credit under section 42 is allowable, section 183 does not apply to disallow losses, deductions, or credits attributable to the ownership and operation of the building.

(b) *Limitation.* Notwithstanding paragraph (a) of this section, losses, deductions, or credits attributable to the ownership and operation of a qualified low-income building with respect to which the low-income housing credit under section 42 is allowable may be limited or disallowed under other provisions of the Code or principles of tax law. See, e.g., Sections 38(c), 163(d), 465, 469; *Knetsch* versus *United States*, 364 U.S. 361 (1960) ("sham" or "economic substance" analysis); and *Frank Lyon Co.* versus *Commissioner*, 435 U.S. 561 (1978) ("ownership" analysis).

(c) *Effective date.* The rules set forth in paragraphs (a) and (b) of this section shall be effective with respect to buildings placed in service after December 31, 1986.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–27173 Filed 11–12–91; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–321, RM–7833]

Radio Broadcasting Services; Port St. Joe, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WMTO Limited Partnership proposing the substitution of Channel 228C2 for Channel 228C3 at Port St. Joe, Florida, and modification of its construction permit for Station WMTO(FM) to specify the higher class channel. Channel 228C2 can be allotted to Port St. Joe in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 kilometers (4.8 miles) southeast at petitioner's specified site. The coordinates are North Latitude 29–45–17 and West Longitude 85–15–26. In accordance with section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before December 30, 1991, and reply comments on or before January 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Erwin G. Krasnow, Verner, Liipfert, Bernhard, McPherson and Hand, 901 15th Street, NW., suite 700, Washington, DC 20005–2301 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission Notice of Proposed Rule Making, MM Docket No. 91–321, adopted October 28, 1991, and released November 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-27283 Filed 11-12-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-320, RM-7832]

Radio Broadcasting Services; Brunswick, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Robert L. Yontz proposing the allotment of Channel 281A at Brunswick, Georgia, as the community's third local FM service. Channel 281A can be allotted to Brunswick in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this proposed allotment are North Latitude 31-10-00 and West Longitude 81-29-48.

DATES: Comments must be filed on or before December 30, 1991, and reply comments on or before January 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Griffith Johnson, Jr., Bryan, Cave, McPheeters & McRoberts, 700 13th Street, NW., suite 700, Washington, DC 20005-3960 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-320, adopted October 28, 1991, and released November 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors. Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-27282 Filed 11-12-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-319, RM-7844]

Radio Broadcasting Services; Blakely, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hirsch Broadcasting, Inc., requesting the substitution of Channel 226C3 for Channel 226A at Blakely, GA, and modification of the license for Station WDKZ(FM) to specify the higher class channel. Channel 226C3 can be allotted to Blakely at the petitioner's specified site in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.6 kilometers (10.3 miles) southwest of the community. The coordinates are North Latitude 31-17-00 and West Longitude 85-04-00. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before December 30, 1991, and reply comments on or before January 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roy F. Perkins, Jr., 1724 Whitewood Lane, Herndon, Virginia 22070 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-319, adopted October 28, 1991, and released November 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-27284 Filed 11-12-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-317, RM-7854]

Radio Broadcasting Services; Marshall, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Paradise Broadcasting of Marshall, Inc., proposing the substitution of Channel 298C3 for Channel 296A at Marshall, Minnesota, and modification of the license for Station KBJJ(FM) to specify operation on the higher class channel. The coordinates for Channel 298C3 are 44-24-37 and 95-51-43. In accordance

with § 1.42(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of the higher powered channel at Marshall or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

DATES: Comments must be filed on or before December 30, 1991, and reply comments on or before January 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–5630.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–317 adopted October 28, 1991, and released November 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–27285 Filed 11–12–91; 8:45 am]

BILLING CODE 6512–01–M

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47 CFR Part 73

[MM Docket No. 91–318, RM–7853]

Radio Broadcasting Services; Three Lakes, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Three Lakes Broadcasting proposing the allotment of Channel 229C2 to Three Lakes, Wisconsin, as that community's first local broadcast service. The coordinates for Channel 229C2 are 45–47–48 and 89–10–06. Canadian concurrence will be requested for the allotment of Channel 229C2 at Three Lakes.

DATES: Comments must be filed on or before December 30, 1991, and reply comments on or before January 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Susan Rester Miles, Hessian, McKasy & Soderberg Professional Association, 4700 IDS Center, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–318 adopted October 28, 1991, and released November 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036 (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–27286 Filed 11–12–91; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 56, No. 219
Wednesday, November 13, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Cooperative Forestry Research Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1987, (Pub. L. 92–463, 86 Stat. 770–776) U.S. Department of Agriculture announces the following meeting:

Name: Cooperative Forestry Research Advisory Council.

Date: December 11–12, 1991.

Time: 8:30 a.m.—5 p.m.

Place: Room 338B & 338C Aerospace Center, 901 D Street, SW., Washington, DC.

Type of Meeting: Open to public. Persons may participate in the meeting if time and space permit.

Comments: The public may file written comments before or after the meeting by contacting the person below.

Purpose: The council will be deliberating the McIntire-Stennis Cooperative Forestry Research program with particular emphasis on the National Research Council report, "Forestry Research: A Mandate for Change", forestry and natural resources policy, the National Research Initiative, and international forestry.

Contact Person for Agenda and More Information: Peter A. Muscato, Cooperative State Research Service, room 329, Aerospace Building, U.S. Department of Agriculture, Washington, DC, 20250–2200; telephone (202) 401–4515.

Dated: November 6, 1991.

Clare I. Harris,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 91–27275 Filed 11–12–91; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–809

Certain Small Business Telephone Systems and Subassemblies Thereof From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain small business telephone systems and subassemblies thereof (SBTS) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Iwatsu Electric Co., Ltd., and the period August 3, 1989 through November 30, 1990. We preliminarily find a margin of 104.62 percent for the manufacturer/ exporter, Iwatsu.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Futtner or Timothy Volker, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3814/ 8120.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1989, the Department of Commerce (The Department) published in the **Federal Register** (54 FR 50789) an antidumping duty order on certain small business telephone systems and subassemblies thereof from Japan. On December 20, 1990, the respondent, Iwatsu Electric Co., Ltd. (Iwatsu), requested an administrative review of the antidumping duty order. We initiated the review, covering the period August 3, 1989 through November 30, 1990, on January 30, 1991 (56 FR 3445).

Scope of the Review

The products covered by this review are certain small business telephone systems and subassemblies thereof, currently classifiable under Harmonized Tariff Schedule item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: Housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and

consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

Such or Similar Comparisons

Pursuant to section 771(16)(C) of the Tariff Act, we established four categories of "such or similar" merchandise consisting of: (a) Control and switching equipment; (b) circuit cards and modules; (c) telephone sets and consoles; and (d) complete small business telephone systems ("systems").

Product comparisons were made using criteria which are ranked in order of importance. For control and switching equipment we used the following criteria: (1) Port capacity based on minimum operational configuration; (2) type of central microprocessor; and (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) Functions; and (2) physical appearance. For telephone sets and consoles we considered: (1) number of buttons (regardless of function) excluding dialpad; and (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

When there was no identical product in the home market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Tariff Act.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Tariff Act and found that the home market was viable.

United States Price

In calculating United States price, we used exporter's sales price as defined in section 772 of the Tariff Act. Exporter's sales price was based on the packed f.o.b. price to unrelated purchasers in the United States. We made deductions, where appropriate, for brokerage and handling in Japan, inland freight in Japan, U.S. brokerage and handling, U.S. inland freight, ocean freight, marine insurance, and U.S. import duties.

In accordance with section 772(e)(1) of the Tariff Act, we made additional deductions, where appropriate, for commissions incurred on U.S. sales. In accordance with section 772(e)(2) of the Tariff Act, we deducted expenses associated with competition rebates, advertising, credit, and indirect selling expenses. We deducted value-added resulting from further manufacturing performed on the imported merchandise after its importation in accordance with section 772(e)(3) of the Tariff Act.

We did not allow Iwatsu's claim to offset warranty expense with repair revenues because Iwatsu could not attribute repair revenues to specific products. Rather, we deducted warranty expense from U.S. price.

Foreign Market Value

In accordance with section 773 of the Tariff Act, we calculated foreign market value (FMV) for Iwatsu based on home market sales prices or constructed value (CV), as appropriate. When sales in the home market were used, we calculated FMV based on packed, delivered prices to unrelated customers. We deducted home market packing costs from the FMV and added U.S. packing costs. We made deductions, where appropriate, for inland freight and competition rebates. We made circumstance-of-sale adjustments, where appropriate, for differences in credit terms and direct advertising expenses. We also allowed a deduction for home market indirect selling expenses. This deduction for indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with section 353.56(b) of the Department's regulations.

We did not consider cash discounts and non-competition rebates since these are not included in the U.S. price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

For those products sold in the United States for which there were no sales of such or similar home market models, we calculated FMV based on CV in accordance with section 773(e) of the Tariff Act. The CV includes the cost of materials and fabrication for the exported merchandise, plus general expenses, profit and packing. We calculated a single ratio for selling, general and administrative expenses for all products. We used the statutory minimum amount of eight percent for profit since Iwatsu's reported profit was less than the statutory minimum.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period August 3, 1989 through November 30, 1990:

Manufacturer/exporter	Margin (percent)
Iwatsu Electric Co., Ltd	104.62

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of small business telephone systems and subassemblies from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or, if not covered in this review, the original investigation; and (4) the cash deposit

rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm will be the "All Others" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Case briefs from interested parties may be submitted not later than 14 days before the date of the hearing. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 1, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-27288 Filed 11-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-803]

Certain Small Business Telephone Systems and Subassemblies Thereof From Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain small business telephone systems and subassemblies thereof (SBTS) from Korea. The review covers one manufacturer/exporter of this merchandise to the United States, Samsung Electronics Co., Ltd., and the period August 3, 1989 through January 31, 1991. We preliminarily find a margin of 0.15 percent for the manufacturer/ exporter, Samsung.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Futtner or Timothy Volker, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3814/ 8120.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 1990, the Department of Commerce (The Department) published in the **Federal Register** (55 FR 4215) an antidumping duty order on certain small business telephone systems and subassemblies thereof from Korea. On February 28, 1991, the respondent, Samsung Electronics Co., Ltd. (Samsung), requested an administrative review of the antidumping duty order. We initiated the review, covering the period August 3, 1989 through January 31, 1991, on March 15, 1991 (56 FR 11177).

Scope of the Review

The products covered by this review are certain small business telephone systems and subassemblies thereof, currently classifiable under Harmonized Tariff Schedule item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

Such or Similar Comparisons

Pursuant to section 771(16)(C) of the Tariff Act, we established four categories of "such or similar" merchandise consisting of: (a) control and switching equipment; (b) circuit cards and modules; (c) telephone sets and consoles; and (d) complete small business telephone systems ("systems").

Product comparisons were made using criteria which are ranked in order of importance. For control and switching

equipment we used the following criteria: (1) Port capacity based on minimum operational configuration; (2) type of central microprocessor; and (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) functions; and (2) physical appearance. For telephone sets and consoles we considered: (1) Number of buttons (regardless of function) excluding dialpad; and (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

When there was no identical product in the home or third country market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Tariff Act.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Tariff Act and found that the home market was viable.

United States Price

In calculating United States price, we used purchase price as defined in section 772 of the Tariff Act because all sales were made directly to unrelated parties prior to importation into the United States. Purchase price was based on packed f.o.b., Korean port prices to unrelated purchasers in the United States. We made deductions, where appropriate, for inland freight, customs clearance fees, and bill of lading fees. We added rebated duties and uncollected duties pursuant to section 772(d) of the Tariff Act.

Foreign Market Value

In accordance with section 773 of the Tariff Act, we calculated foreign market value (FMV) for Samsung based on home market sales prices or constructed value (CV), as appropriate. When sales in the home market were used, we calculated FMV based on packed, delivered prices to unrelated customers. We deducted home market packing costs from the FMV and added U.S. packing costs. We made deductions, where appropriate, for inland freight, cash discounts, and rebates. We made circumstance-of-sale adjustments, where appropriate, for differences in credit terms, advertising expenses, warranty expenses, postage fees, and foreign exchange fees pursuant to section 773 of the Tariff Act. We did not deduct the reported home market technical service expense since we considered it to be an indirect selling expense.

We made a circumstance-of-sale adjustment to eliminate any difference in value-added taxes (VAT) between the U.S. and home market prices. We computed the VAT adjustment based on a U.S. price net of all charges incurred in the United States and net of all movement charges incurred between the Korean port and the United States.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations.

For those products sold in the United States for which there were no sales of such or similar home market models, we calculated FMV based on CV in accordance with section 773(e) of the Tariff Act. The CV includes the cost of materials and fabrication for the exported merchandise, plus general expenses, profit and packing. We used the statutory minimum amounts for general expenses and profit, except in those cases where Samsung's actual general expenses and profit exceeded the statutory minimum amounts.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period August 3, 1989 through January 31, 1991:

Manufacturer/exporter	Margin (percent)
Samsung Electronics Co., Ltd.	0.15

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of small business telephone systems and subassemblies from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or, if not covered in this review, the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm will be the "All Others" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Case briefs from interested parties may be submitted not later than 14 days before the date of the hearing. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 1, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-27289 Filed 11-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-806]

Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner and respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain small business telephone systems and subassemblies thereof (SBTS) from Taiwan. The review covers seven manufacturer/exporters of this merchandise to the United States, Sinoca Enterprises Co., Ltd. (Sinoca), Bitronic Telecoms Co., Ltd. (Bitronic), Auto Telecom Co., Ltd. (Auto Telecom), Taiwan International Standard Electronics, Ltd. (TAISEL), Taiwan Telecommunications Industry Co., Ltd. (Taiwan Telecom), Tecom Co., Ltd. (Tecom), and Magtron Co. (Magtron), and the period August 3, 1989, through November 30, 1990. The margins are set forth under the Preliminary Results of Review section.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Futtner or Steven Presing, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3814/4106.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (55 FR 51139) of the antidumping duty order on SBTS from Taiwan (54 FR 42541, October 17, 1989). On December 28, 1990, the petitioner, AT&T, requested an administrative review of the following companies: Auto Telecom Co., Ltd (Auto Telecom), Bitronic Telecoms Co., Ltd. (Bitronic), Sinoca Enterprises Co., Ltd. (Sinoca), Taiwan International Standard Electronics, Ltd. (TAISEL), Taiwan Telecommunications Industry Co., Ltd. (Taiwan Telecom), Tecom Co., Ltd. (Tecom), and Magtron Co. (Magtron). On December 31, 1990, respondents, Tecom, Bitronic, and TAISEL requested administrative reviews of the antidumping duty order. We initiated the review, covering the period August 3, 1989, through November 30, 1990, on January 30, 1991 (56 FR 3445). When a company refused to cooperate with the Department, we used best information available (BIA). As BIA we have applied the highest of the rate found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation or the highest rate found in this review for the same class or kind of merchandise in the same country of origin in accordance with section 776(c) of the Tariff Act. Final Results of Administrative Review, Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, 56 FR 31692, 31705 (July 11, 1991).

Auto Telecom filed letters requesting an exemption from responding to the Department's questionnaire claiming that their sales to the United States were "With No Commercial Value". The Department explained to Auto Telecom that they were not exempt, and that they would have to respond to the questionnaire and report all sales. Auto Telecom has refused to report the necessary information requested in the Department's questionnaire. We have applied the BIA rate for Auto Telecom in accordance with section 776(c) of the Tariff Act.

TAISEL filed a statement stating that they were not in a position to reconstruct the information to respond to the Department's questionnaire since their SBTS business no longer exists. To respond to the Department's questionnaire would seriously disrupt TAISEL's on-going operations and they stated that they will not participate in the Department's review. We have applied the BIA rate for TAISEL in accordance with section 776(c) of the Tariff Act.

Taiwan Telecom filed a statement that it did not ship or sell SBTS or subassemblies thereof to the United States during the period or review. We have applied the "All Others" rate for Taiwan Telecom.

Magtron filed a similar statement stating that is does not produce SBTS or subassemblies thereof, nor are they engaged in the business of selling or exporting SBTS or subassemblies thereof. We have applied the "All Others" rate for Magtron.

Scope of the Review

The products covered by this review are certain small business telephone systems and subassemblies thereof, currently classifiable under Harmonized Tariff Schedule item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: Housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: Connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24

volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

Such or Similar Comparisons

Pursuant to section 771(16)(C) of the Tariff Act, we established four categories of "such or similar" merchandise consisting of: (a) Control and switching equipment; (b) circuit cards and modules; (c) telephone sets and consoles; and (d) complete small business telephone systems ("systems").

Product comparisons were made using criteria which are ranked in order of importance. For control and switching equipment we used the following criteria: (1) Port capacity based on minimum operational configuration; (2) type of central microprocessor; and (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) Functions; and (2) physical appearance. For telephone sets and consoles we considered: (1) Number of buttons (regardless of function) excluding dialpad; and (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

When there was no identical product in the home or third country market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise (difmer) in accordance with section 773(a)(4)(C) of the Tariff Act. When adjustments for differences in the merchandise proved to be substantial, greater than plus or minus twenty percent of U.S. cost of manufacturing, we used constructed value.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Tariff Act.

Sinoca had no such or similar sales in the home market. Therefore, we used third country sales and constructed value (CV) where appropriate. For Bitronic and Tecom, there were sufficient home market sales to unrelated customers for each of the such or similar categories.

United States Price

For Bitronic, we calculated the United States price based on both exporter sales price (ESP) and PP in accordance with section 772 (b) and (c) of the Tariff Act. ESP was used in each case when the sales to the first unrelated purchaser took place after importation into the United States. For Sinoca and Tecom, however, we calculated United States price based only on purchase price (PP) in accordance with section 772(b) of the Tariff Act. Both Sinoca's and Tecom's sales were made directly to unrelated parties prior to importation into the United States. Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States.

Bitronic: We calculated ESP based on packed, delivered prices in the United States. We made deductions, where appropriate, for inland freight, indirect selling expenses, brokerage and handling, export duty, re-packing incurred in the U.S. market, insurance, and imputed credit. We added uncollected duties and taxes, which would have been collected if the merchandise had not been exported, in accordance with section 772(d)(1)(C) of the Tariff Act.

We calculated PP based on packed f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions for brokerage and handling. We added uncollected duties and taxes, which would have been collected if the merchandise had not been exported, in accordance with section 772(d)(1)(C) of the Tariff Act.

Sinoca: We calculated PP based on packed f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, inland freight, export tax, and bank fees associated with handling charges.

Tecom: We calculated PP based on packed f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, inland freight, harbor tax, variable warranty and technical services, and service fee. We made an addition for uncollected duties and taxes, which would have been collected if the merchandise had not been exported, to the U.S. price in accordance with section 772(d)(1)(C) of the Tariff Act.

Foreign Market Value

In accordance with section 773 of the Tariff Act, because Sinoca's home market was not viable, we calculated FMV for Sinoca based on third country (Dominican Republic) sales. When there were no contemporaneous matches in the third country we used Constructed Value (CV) for our comparisons. For Bitronic and Tecom, we calculated FMV based on home market sales prices in accordance with section 773 of the Tariff Act.

Bitronic: We calculated FMV for comparison to U.S. ESP sales based on packed, delivered prices in the home market. We made deductions, where appropriate, for foreign inland freight, indirect selling expenses, advertising, rebates, packing and imputed credit. The deduction for indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.56(b) of the Department's regulations. We added U.S. packing costs to the FMV in accordance with section 773 of the Tariff Act. We made an upward adjustment to tax-exclusive home market prices for the uncollected duties and taxes we computed for U.S. price in accordance with section 772(d)(1)(C) of the Tariff Act. We computed the value added tax (VAT) adjustment based on a price net of all movement charges.

We calculated FMV for comparison to U.S. PP sales based on packed delivered prices in the home market. We made deductions, where appropriate, for inland freight, advertising, rebates, packing, and imputed credit. We added U.S. packing costs and U.S. credit to the FMV in accordance with section 773(a)(1) of the Tariff Act. We made an upward adjustment to tax-exclusive home market prices for the uncollected duties and taxes we computed for U.S. price in accordance with section 772(d)(1)(C) of the Tariff Act. We computed the VAT adjustment based on a price net of all movement charges.

For both ESP and PP comparisons, where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise (difmer), in accordance with § 353.57 of the Department's regulations. Because Bitronic did not provide constructed value (CV) information we were unable to use CV when the difmer was greater than plus or minus twenty percent of the U.S. cost of manufacturing. For these transactions, we applied the highest

margin on any individual transaction as BIA available in accordance with section 776(c) of the Tariff Act.

Comparisons were made with both ESP and PP sales at the same level of trade (*i.e.*, dealer to dealer) in accordance with § 353.58 of the Departments regulations. When comparisons were not available at the same level of trade, we compared Bitronic's U.S. sales to its home market sales at the next level of trade without making a level of trade adjustment. Bitronic argued that differences based on price comparability studies justifies making a level of trade adjustment. Bitronic's contention that a level of trade adjustment should be based on the measurable difference in prices across levels does not address the issue of whether the difference in price is due to the difference in level of trade, or whether any other factors are affecting the difference in price. Consistently with our past practice on this question, we find that evidence of price differences does not justify any level of trade adjustment. Final Results of Administrative Review, Tapered Roller Bearings from Japan, 56 Fed. Reg. 41508, 41512 (August 21, 1991).

Sinoca: We calculated FMV based on prices in the third country market or CV, as appropriate. Prices in the third country were based on packed, delivered, or ex-works prices to unrelated customers and CV. We made deductions, where appropriate, for export tax, brokerage and handling, foreign inland freight, bank fees associated with handling charges, and home market packing. A circumstance of sale adjustment was made for imputed credit in accordance with section 773 of the Tariff Act. U.S. packing and imputed credit were added to FMV.

Tecom: We calculated purchase price based on packed f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, inland freight, advertising, packing, variable technical services, and imputed credit. U.S. imputed credit and U.S. packing were added to FMV in accordance with section 773 of the Tariff Act. We made an upward adjustment to tax-exclusive home market prices for the uncollected duties and taxes we computed for U.S. price in accordance with section 772(d)(1)(C) of the Tariff Act. We computed the VAT adjustment based on a price net of all movement charges.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations. Because Tecom did not provide constructed value (CV) information we were unable to use CV when the difmer was greater than plus or minus twenty percent of the U.S. cost of manufacturing. For these transactions, we applied the highest margin on any individual transaction as BIA available in accordance with section 776(c) of the Tariff Act.

Tecom sells to dealers and distributors in the home market and sells to original equipment manufacturers (OEMs) in the U.S. market. Tecom provided evidence that, in a separate line of business, differences do exist in its home market between OEMs and dealer/distributors. However, this evidence does not support a conclusion that this is indicative of the experience in the small business telephones sector. Therefore, we did not make a level of trade adjustment to Tecom's home market distributor/dealer sales when comparing to Tecom's U.S. (OEM) sales.

Constructed Value

In accordance with section 773(e) of the Tariff Act, for those products sold in the United States for which there were no contemporaneous such or similar third country models we calculated FMV based on Constructed Value (CV). We used CV only in calculating FMV for Sinoca.

We also calculated FMV based on CV when the difmer adjustment between the reported home market or third country product and the U.S. product was greater than plus or minus twenty percent of U.S. COM, as explained previously in the "Such or Similar Comparisons" section of this notice.

Sinoca: For models which did not have contemporaneous sales, we calculated the FMV based on CV. The CV includes the cost of materials, labor, and overhead of the exported merchandise, plus selling, general and administrative expenses, and profit. We did not use the statutory minimum amount of ten percent for general expenses because Sinoca's reported general expenses were greater.

However, for profit, we used the statutory minimum of eight percent because Sinoca's reported profit was less than the statutory minimum.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period August 3, 1989 through November 30, 1990:

Manufacturer/producer/exporter	Margin percentage
Sinoca	2.43
Bitronic	11.85
Auto Telecom	129.73
Tecom	22.07
TAISEL	129.73
Taiwan Telecom	22.07
Magtron	22.07

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of Taiwanese small business telephone systems and subassemblies entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or, if not covered in this review, the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm will be the "All Others" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results

within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Case briefs from interested parties may be submitted not later than 14 days before the date of the hearing. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 1, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-27290 Filed 11-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-570-816]

Initiation of Countervailing Duty Investigations: Oscillating Fans and Ceiling Fans From the People's Republic of China ("PRC")

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham or Carole A. Showers, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room, B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4105 or 377-3217.

INITIATION:

The Petition

On October 17, 1991, we received a petition in proper form filed by Lasko Metal Products, Inc. on behalf of the United States industry producing oscillating fans and ceiling fans ("fans"). Petitioner alleges that manufacturers, producers or exporters of fans in the PRC receive bounties or grants within the meaning of section 103 of the Tariff Act of 1930, as amended ("the Act"). Since the PRC is not a "country under the Agreement" within the meaning of section 701(b)(3), the International Trade Commission ("ITC") is not required to determine whether, pursuant to section 303(a)(2), imports of such merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petitioner because it is an interested party, as defined in 19 CFR 355.2(i), and because it has filed the petition on behalf of the U.S. industry producing fans. If any interested party, as described in 19 CFR 355.2(i) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration, room B099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

I. Analysis of Petition

In 1984 decisions involving carbon steel wire rod from Czechoslovakia and Poland, 49 FR 19370 (May 7, 1984), ("*Wire Rod*") the Department determined that it would not impose the market-based concept of a subsidy on a system where subsidies have no meaning and cannot be fairly identified or quantified. We further concluded that Congress could not have intended to apply the countervailing duty ("CVD") law to nonmarket economy ("NME") countries. The Department's determinations are subsequently upheld by the U.S. Court of Appeals for the Federal Circuit. (*Georgetown Steel Corporation* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986).) Thereafter, Congress rejected legislation which would have overturned *Georgetown*. See H.R. Rep. No. 576, 100th Cong. 2d Sess. 628 (1988).

In the cases which gave rise to *Georgetown*, petitioners alleged that the producers of the products in question benefited from subsidies despite the fact that they were operating in a NME country. Thus, petitioners did not allege, and the Department did not have to decide, whether the CVD law could be applied to a particular sector of an economy, notwithstanding the fact that the economy as a whole was a nonmarket economy. In the instant case, petitioner has alleged that regardless of the nature of the PRC economy, the PRC fans sector operates substantially pursuant to market principles and that the CVD law should apply. Therefore, the Department must decide (1) whether the PRC fans sector does, in fact, operate in a market setting; and (2) if so, whether the CVD law can be applied to this sector. In order to answer these questions, we must start with the fundamental principles set forth in *Wire Rod* and in *Georgetown*.

In *Wire Rod*, we contrasted typical market economy systems with typical NME systems:

> Despite the varying degrees of regulation, state ownership, and state intervention [in market economy countries], we can still identify a bounty or grant. This is primarily because private ownership of resources has remained the rule, rather than the exception, and these governments have not tried to supplant the market as the allocator of resources. A countervailable action in a market economy is a distortion. It encourages a producer to sell abroad rather than in his home market or, in the case of a domestic subsidy, gives preferential treatment to an industry or sector of the economy. In either situation, the subsidy is identifiable as differential treatment: different from the market or different from other firms or sectors. Subsidies in market economy systems are exceptional events. They can be discerned from the background provided by the market system.
>
> No such background exists in an NME. By market standards, the nonmarket environment is riddled with distortions.
>
> Prices are set by central planners. "Losses" suffered by production and foreign trade enterprises are routinely covered by government transfers. Investment decisions are controlled by the state. Money and credit are allocated by central planners. The wage bill is set by the government. Access to foreign currency is restricted. Private ownership is limited to consumer goods.

In sum, the salient characteristics which set market economies apart from nonmarket economies, and which may render the application of the CVD law possible, are the prevalence of private ownership and the fact that governments do not replace the market as the allocator of resources.

We have reviewed carefully the petition to determine whether the evidence it contains indicates that the PRC fans sector operates more like the market economy or the nonmarket economy described in the *Wire Rod* decisions. Among the alleged facts provided are:

- Of the 14 known producers, six are foreign-owned or partially foreign-owned, six are collectively-owned, and two are state-owned;
- PRC-sourced inputs (which are relatively few) are purchased at negotiated prices, i.e., they are not provided through or as a result of a central plan;
- Pricing and production decisions are made without any government interference.

These alleged facts indicate that the PRC fans sector is characterized by private and collective ownership. Based on past antidumping ("AD") investigations of imports from the PRC, we have found certain collectively-

owned enterprises which operate like privately-owned enterprises in terms of their ability to retain profits and make investment decisions independent of the government. (See, for example the public verification reports in the AD investigation of chrome-plated lug nuts from the PRC.) Therefore, the alleged facts indicate a prevalence of private or private-like ownership in the PRC fans sector.

Moreover, the fans producers allegedly procure inputs and market their output without government intervention. Therefore, the government does not appear to be directing the flow of inputs or the output of this sector. Instead, as petitioner has put it, the evidence indicates the fans producers' "responsiveness to the forces of supply and demand," i.e., market forces.

Based on this, we determine that petitioner has provided sufficient information to indicate that the PRC fans producers operate in an economic environment which differs significantly from the nonmarket economic systems we found in *Wire Rod*. Therefore, for purposes of this initiation, we conclude that it is appropriate to investigate whether the CVD law applies to fans producers and, if so, whether fan producers in the PRC receive bounties or grants within the meaning of section 303 of the Act.

In recent AD determinations involving the PRC, we determined that it was appropriate to ascertain the market orientation of a sector by analyzing the prices and costs incurred by each producer within that sector. See, Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China ("Fans") (56 FR 55271, October 25, 1991), and Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China ("Lug Nuts") (56 FR 46153, September 10, 1991). By virtue of our initiation of this investigation, we are reconsidering the appropriateness of that approach established in Fans and Lug Nuts.

II. Allegations of Bounties or Grants

Petitioner lists a number of practices by the PRC Government which allegedly confer bounties or grants on manufacturers, producers or exporters of fans. We are initiating an investigation of the following programs.

1. Benefits for Foreign-Invested Export Enterprises.

a. Reduced Tax Rate for Export Enterprises
b. Tax Exemption for Profits Reinvested in China
c. Duty Drawback and Excise Tax Exemption for Imports of Machinery
d. Exemption from Required Payments to Employees
e. Reduced Site-Use Fees and Exemptions
f. Priority Access to Credit
g. Priority Access to Electricity, Water, Transportation, and Communication Facilities

2. Benefits for Enterprises in Special Economic Zones.

a. Reduced Tax Rates or Exemptions

3. Multiple Exchange Rates.

We are not initiating on the programs listed below because the requirements of section 303 of the act were not fulfilled in the petition.

a. *Benefits provided by provincial authorities.* Petitioner alleges that provincial governments in China heavily subsidize goods produced within their jurisdiction. Since most of the fan producers are in the Guangdong province, petitioner believes that they benefit from provincial programs. Petitioner has not provided sufficient documentation to support its allegation of the existence of provincial subsidy programs. Therefore, we are not initiating on this program.

b. *Tax exemption for repatriated profits for foreign-invested export enterprises and for enterprises in special incentive zones.* Petitioner alleges that if foreign investors in export enterprises remit their profits abroad, the amount remitted shall be exempted from income tax. The Department has previously determined that such an exemption from income taxes does not confer a bounty or grant upon manufacturers, producers, or exporters in the country subject to an investigation because the exemption only applies to income received by a foreign entity. As a result, the exemption would bestow no benefit on the enterprise in the subject country. (See Bicycle Tires and Tubes from Korea; Final Results of Administrative Review of Countervailing Duty Order, (48 FR 32205, 32207, July 14, 1983).) Therefore, we are not initiating on this program.

Initiation of Investigation

Under 19 CFR 355.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the bases on which a countervailing duty may be imposed under section 303 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on fans from the PRC and find that it meets the requirements of 19 CFR 355.13(a). Therefore, we are initiating a countervailing duty investigation to determine whether Chinese producers or exporters of fans receive bounties or grants. In accordance with 19 CFR 355.15(a) of the Department's regulations, the Department will make its preliminary determination on or before January 10, 1992, unless the investigation is terminated pursuant to 19 CFR 355.17(a) or (b) or the preliminary determination is extended pursuant to 19 CFR 355.15(b) or (c).

Scope of Investigations

Imports covered by these investigations constitute two classes or kinds of merchandise: (1) Oscillating fans; and (2) ceiling fans.

The merchandise subject to these investigations are oscillating fans and ceiling fans. Oscillating fans are electric fans that direct a flow of air using a fan blade/motor unit that pivots back and forth on a stationary base ("oscillates"). Oscillating fans incorporate a self-contained electric motor of an output not exceeding 125 watts.

Ceiling fans are electric fans that direct a downward and/or upward flow of air using a fan blade/motor unit. Ceiling fans incorporate a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans are designed for permanent or semi-permanent installation.

Window fans, industrial oscillating fans, industrial ceiling fans, and commercial ventilator fans are not included within the scope of these investigations. Furthermore, industrial ceiling fans are defined as ceiling fans that meet six or more of the following criteria in any combination: a maximum speed of greater than 280 revolutions per minute (RPMs); a minimum air deliver capacity of 8000 cubic feet per minute (CFM); no reversible motor switch; controlled by wall-mounted electronic switch; no built-in motor controls; no decorative features; not light adaptable; fan blades greater than 52 inches in diameter; metal fan blades; downrod mounting only—no hugger mounting capability; three fan blades; fan blades mounted on top of motor housing; single-speed motor.

The Harmonized Tariff Schedule (HTS) subheading under which oscillating fans are classifiable is 8414.51.0090. The HTS subheading under which ceiling fans are classifiable is 8414.51.0030. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This determination is published pursuant to section 702(c) of the Act (19 U.S.C. 1671a(b)).

Dated: November 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-27291 Filed 11-12-91; 8:45am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first Request for Panel Review of final determination of injury made by the Canadian International Trade Tribunal respecting Certain Beer Originating in or Exported from the United States of America by G. Heileman Brewing Company, Inc., Pabst Brewing Company and The Stroh Brewery Company for Use or Consumption in the Province of British Columbia, filed by G. Heileman Brewing Company, Inc. with the Canadian Section of the Binational Secretariat on October 16, 1991.

SUMMARY: On October 16, 1991, the G. Heileman Brewing Company, Inc. filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination of injury made by the Canadian International Trade Tribunal respecting Certain Beer Originating in or Exported from the United States of America by G. Heileman Brewing Company, Inc., Pabst Brewing Company and The Stroh Brewery Company for Use or Consumption in the Province of British Columbia. The Binational Secretariat has assigned Case Number CDA-91-1904-02 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on October 16, 1991, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 15, 1991);

(b) A Party, investigating authority or interested person, including, in the case of a final determination made in Canada, any person that would be entitled to appear and be represented in a judicial review of the final determination, that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is December 2, 1991); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 5, 1991.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-27292 Filed 11-12-91; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first Request for Panel Review of final determination of dumping made by the Deputy Minister of Revenue Canada for Customs and Excise, respecting Certain Beer Originating in or Exported from the United States of America by G. Heileman Brewing Company, Inc., Pabst Brewing Company and The Stroh Brewery Company for Use or Consumption in the Province of British Columbia, filed by G. Heileman Brewing Company, Inc. with the Canadian Section of the Binational Secretariat on September 26, 1991.

SUMMARY: On September 26, 1991, the G. Heileman Brewing Company, Inc. filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination of dumping made by the Deputy Minister of Revenue Canada for Customs and Excise, respecting Certain Beer Originating in or Exported from the United States of America by G. Heileman Brewing Company, Inc., Pabst Brewing Company and The Stroh Brewery Company for Use or Consumption in the Province of British Columbia. The Binational Secretariat has assigned Case Number CDA-91-1904-01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational

panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on September 26, 1991, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 28, 1991);

(b) A Party, investigating authority or interested person, including, in the case of a final determination made in Canada, any person that would be entitled to appear and be represented in a judicial review of the final determination, that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 12, 1991); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 5, 1991.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-27293 Filed 11-12-91; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council (Council), its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) will hold public meetings on December 2–8, 1991, at the Hilton Hotel in Anchorage, Alaska. The Council meeting will begin on December 3 at 8 a.m. The AP and the SSC will begin meetings on December 2 at 10:30 a.m.

Council's Agenda

(1) Reports by the Alaska Department of Fish and Game, National Marine Fisheries Service (NMFS), and the U.S. Coast Guard; (2) reports on Bering Sea and Aleutians crab surveys and on seabirds; (3) review of the revised Draft Legislative Environmental Impact Statement for Marine Mammal amendments and preparation of comments to the NMFS. Review of proposed rules to implement Steller sea lion protective measures; (4) review of progress on revising the North Pacific Fisheries Research Plan and consider action of approval of a program for Secretarial review; (5) approval of the memberships of the AP, SSC, the Pacific Northwest Crab Industry Advisory Committee, and fishery management plan teams; (6) review of foreign vessel permit applications for 1992; (7) report on implementation of individual fishery quota management systems for the fixed gear sablefish and the halibut fisheries off Alaska and consideration of final approval of the programs for Secretarial review; (8) approval of an allocative proposal to expand the International Pacific Halibut Commission's halibut management Area 4C; (9) restrictions on U.S. operations related to fisheries in international waters of the central Bering Sea; (10) review of progress on development of a moratorium on all fisheries under Council jurisdiction and the progress on a comprehensive rationalization program; (11) review of research priorities; (12) final approval of 1992 groundfish and bycatch specifications for the Gulf of Alaska and Bering Sea/Aleutian Islands; (13) final approval of a bycatch amendment for Secretarial review, including possible emergency action; (14) review of changes in the recordkeeping and reporting requirements for 1992; (15) reports from plan teams on strategic plans, reports from other agencies on proposed analyses, and review of staff tasking; (16) approval of a regulatory amendment assigning halibut bycatch to the demersal shelf rockfish hook-and-line fishery in the Southeast Outside District of the Gulf of Alaska. A Council executive session (not open to the public) is scheduled for December 4 at noon to receive a briefing on litigation.

Advisory Groups' Agendas

The Council's AP and SSC agendas will be similar to that of the Council. Other workgroup and committee meetings may be held on short notice during the week. A meeting of the Advisory Panel Nominating Committee will be held to discuss employment matters.

For more information, contact Chris Oliver, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: November 7, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management; National Marine Fisheries Service.

[FR Doc. 91-27256 Filed 11-12-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

November 6, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call

(202) 377–3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement has been reached on a mutually satisfactory solution on Categories 351/651, the United States Government has decided to control imports in these categories for the prorated period beginning on August 9, 1991 and extending through December 31, 1991.

The United States remains committed to finding a solution concerning Categories 351/651. Should such a solution be reached in further consultations with the Government of India, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 47935, published on September 23, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive dated September 17, 1991, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in India and exported during the ninety-day period which began on August 9, 1991 and extends through November 6, 1991.

Effective on November 14, 1991, you are directed to amend the September 17, 1991 directive to extend the restraint period for Categories 351/651 through December 31, 1991 at an increased level of 44,515 dozen [1].

Import charges already made to Categories 351/651 for the ninety-day period shall be retained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for imports exported after August 8, 1991.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-27287 Filed 11-12-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on SDI Countermeasures

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on SDI Countermeasures will meet in closed session on November 22–23 and December 13–14, 1991 at the Pentagon, Arlington, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine and make recommendations on the overall area of countermeasures to the Strategic Defense Initiative (SDI) to assure that systems concepts are responsive to plausible threats and countermeasures.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: November 6, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-27175 Filed 11-12-91; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group, Notice of Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 1 November 1991 in the Pentagon, Arlington, Virginia, to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10 (d) of Public Law 92–463, the "Federal Advisory Committee Act," and section 552b (c) (1) of title 5, United States Code, this meeting will be closed to the public.

Dated: November 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91-27176 Filed 11-12-91; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Amend Record System Notices

AGENCY: Office of the Secretary of Defense (OSD), DOD.

ACTION: Amendment of record systems notices.

SUMMARY: The OSD proposes to amend four record system notices to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed actions will be effective without further notice on December 13, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Mr. Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, DC 20301–1155. Telephone (703) 695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

550 FR 22090, May 29, 1985 (DoD Compliation, changes follow)
550 FR 47087, Nov. 14, 1985
551 FR 11807, Apr. 7, 1986
551 FR 17508, May 13, 1986
551 FR 44668, Dec. 11, 1986
52 FR 23334, Jun. 19, 1987
53 FR 15868, May 4, 1988
53 FR 27894, Jul. 25, 1988
54 FR 33756, Aug. 16, 1989
54 FR 43314, Oct. 24, 1989
55 FR 17655, Apr. 26, 1990
55 FR 20180, May 15, 1990
55 FR 21429, May 24, 1990
55 FR 35449, Aug. 30, 1990
55 FR 49405, Nov. 28, 1990
56 FR 4603, Feb. 5, 1991
56 FR 7016, Feb. 21, 1991
56 FR 9200, Mar. 5, 1991
56 FR 9348, Mar. 6, 1991
56 FR 10545, Mar. 13, 1991

The amended systems are not within the purview of subsection (r) of the Privacy Act of 1974, as amended (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record systems being amended are provided below.

Dated: November 5, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P41.0

System name:

OSD/JS Drug-Free Workplace [54 FR 33758, Aug. 16, 1989].

Changes:

* * * * *

Retention and disposal:

Delete first two paragraphs and replace with "Employee acknowledgment of notice forms are retained for as long as the employee remains with the agency and are destroyed upon separation. Selection and scheduling records are retained for two years or until no longer needed. Specimen collection and handling "permanent" record books are retained for three years after last entry is made and are then destroyed. Specimen chain of custody records are destroyed when three years old. Test result records for employees and applicants are retained for three years and then destroyed."

* * * * *

DWHS P41.0

SYSTEM NAME:

OSD/JS Drug-Free Workplace Files.

SYSTEM LOCATION:

Office of the Secretary of Defense, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of, and applicants for positions in, the Office of the Secretary of Defense (OSDP, the Joint Staff (JS), and all other activities deriving administrative support from Washington Headquarters Services (WHS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the selection, notification, and testing of employees and applicants for illegal drug abuse; collection authentication and chain of custody documents; and laboratory test results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; Pub. L. 100–71; Executive Order 12564, "Drug-Free Federal Workplace", and Executive Order 9397.

PURPOSE(S):

The system is used to maintain Drug Program Coordinator records on the selection, notification, and testing [i.e., urine specimens, drug test results, chain of custody records, etc.) of employees and applicants for illegal drug abuse.

Records contained in this system are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301, the Office of the Secretary of Defense "Blanket Routine Uses" do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Electronic records exists on magnetic tape, diskette, or other machine-readable media.

RETRIEVABILITY:

Records are retrieved by employee or applicant name, Social Security Number, agency name, collection site and date of testing.

SAFEGUARDS:

Paper records are stored in file cabinets that are locked when not being used. Electronic records are accessed on computer terminals in supervised areas using a system with password access safeguards. All employee and applicant records are maintained and used with the highest regard for employee and applicant privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Employee acknowledgement of notice forms are retained for as long as the employee remains with the agency and are destroyed upon separation. Selection and scheduling records are retained for two years or until no longer needed. Specimen collection and handling "permanent" record books are retained for three years after last entry is made and are then destroyed. Specimen chain of custody records are destroyed when three years old. Test result records for employees and applicants are retained for three years and then destroyed.

Destruction of records is accomplished by shredding or burning of paper records. Electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS(ES):

OSD/JS Drug Program Coordinator, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B345, Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the OSD/JS Drug Program Coordinator, Directorate for Personnel and Security,Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301–1155. The request should contain the full name, Social Security Number, and the notarized signature of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the OSD/JS Drug Program Coordinator, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington DC 20301–1155. The request should contain the full name, Social Security Number, and the notarized signature of the subject individual.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense (OSD) rules for accessing records and for contesting contents and appealing initial OSD determinations by the individual concerned are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 311; or may obtained from the system manager.

RECORD SOURCE CATEGORIES:

The test subject, Medical Review Officials, collection personnel and others on a case-by-case basis.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOCHA 01

System name:

Health Benefits Authorization Files (52 FR 28838, June 16, 1987).

Changes:

System name:

Add "and Dental" after the word "Health".

System location:

Delete entry and replace with "Primary system is located at OCHAMPUS, DoD, Aurora, Colorado 80045–6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR), APO New York 09102–5000; and Fiscal Intermediaries (FIs)/Contractors under contract to OCHAMPUS. Each company listed below maintains claim files on beneficiaries in their respective geographical areas. Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–3408; Uniformed Services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201–6660; Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501–4026; Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707–7927; Delta Dental Plan of California, 7667 Folsom Boulevard, Sacramento, CA 95826–9023; FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502 –4900; Foundation Health Federal Services, Inc., 3400 Data Drive, Rancho Cordova, CA 95670–7955.

* * * * *

Categories of records in the system:

After the word "medical" in the second and the third lines, add "and dental".

* * * * *I83Purpose(s):

After the word "health" and "and dental".

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

In the first paragraph, after the words "health care" add "and dental".

Delete the fourth paragraph.

* * * * *

Safeguards:

Delete the second sentence and replace with "Decentralized automated segments within FI operations are accessible on-line only to authorized persons possessing user identification codes."

* * * * *

System manager(s) and address:

Delete entry and replace with "Chief, Program Operations Division, OCHAMPUS, DoD, Aurora, Colorado 80045–6900. Telephone (303) 361–8608."

* * * * *

DOCHA 01

SYSTEM NAME:

Health and Dental Benefits Authorization Files.

SYSTEM LOCATION:

Primary system is located at OCHAMPUS, DoD, Aurora, Colorado 80045–6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR) APO New York 09102–5000; and Fiscal Intermediaries (FIs)/Contractors under contract to OCHAMPUS. Each company listed below maintains claim files on beneficiaries in their respective geographical areas. Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–3408; Uniformed Services Benefit Plans, Inc., 720 North Marr road, Columbus, IN 47201–6660; Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501–4026; Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707–7927; Delta Dental Plan of California, 7667 Folsom Boulevard, Sacramento, CA 95826–9023; FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502–4900; Foundation Health Federal Service, Inc., 3400 Data Drive, Rancho Cordova, CA 95670–7955.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who seek authorization or preauthorization for care under CHAMPUS/CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original correspondence with idividuals, medical and dental statements, Congressional inquiries, medical and dental treatment records, authorization for care, case status sheets, memos for records, follow-up reports justifying extended care, correspondence with fiscal intermediaries and work-up sheets maintained by case workers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 41 CFR part 101–11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and Executive Order 9397.

PURPOSE(S):

To maintain and control records pertaining to requests for authorization or pre-authorization of health and dental care under CHAMPUS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Determine eligibility of an individual, authorize payment, respond to inquiries from congressional offices made at the request of the individual covered by the system, control and review health care and dental management plans, health care demonstration programs, control accomplishment of reviews, and coordinate subject matter clearance for congressional committees and auditors.

Referral to the Secretary of the Department of Health and Human Services and/or the Secretary of the Department of Veterans Affairs consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of CHAMPUS. Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The "Blanket Routine Uses" published at the beginning of OSD's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on magnetic tape and disc. Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by sponsor's Social Security Number and sponsor's or beneficiary's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Decentralized automated segments within FI operations are accessible on-line only to authorized persons possessing user identification codes. OCHAMPUS buildings are protected by Department of Defense security force and/or military police security force.

RETENTION AND DISPOSAL:

Automated indexes are permanent. Hardcopy records are closed out at the end of the calendar year in which finalized, held one additional year, and transferred to the Federal Records Center (FRC). The FRC will destroy the records after an additional five-year retention.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Program Operations Division, OCHAMPUS, DoD, Aurora, Colorado 80045–6900. Telephone (303) 361–8608.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the OCHAMPUS, Privacy Act Officer, Aurora, Colorado 80045–6900.

RECORD ACCESS PROCEDURES:

Individuals seeking assess to records about themselves contained in this system of records should address written inquiries to the OCHAMPUS, Privacy Act Officer, Aurora, Colorado 80045–6900.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants and individuals.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DOCHA 02

System name:

Medical Care Inquiry Files.

Changes:

System name:

Add "and Dental" after the word "Medical".

System location:

Delete entry and replace with "Primary system is located at OCHAMPUS, DoD, Aurora, Colorado 80045–6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR), APO New York 09102–5000; and Fiscal Intermediaries (FIs)/Contractors under contract to OCHAMPUS. Each company listed below maintains medical and dental care inquiry files on beneficiaries in their respective geographical areas. Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–3408; Uniformed Services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201–6660; Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501–4026; Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707–7927; Delta Dental Plan of California, 7667 Folsom Boulevard, Sacramento, CA 95826–9023; FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502–4900; and Foundation Health Federal Services, Inc., 3400 Data Drive, Rancho Cordova, CA 95670–7955."

Categories of individuals covered by the system:

Add "and dental" after the word "health".

* * * * *

DOCHA 02

SYSTEM NAME:

Medical and Dental Care Inquiry Files.

SYSTEM LOCATION:

Primary system is located at OCHAMPUS, DoD, Aurora, Colorado 80045–6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR), APO New York 09102–5000; and Fiscal Intermediaries (FIs)/Contractors under contract to OCHAMPUS. Each company listed below maintains medical and dental care inquiry files on beneficiaries in their respective geographical areas. Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–3408; Uniformed Services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201–6660; Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501-4026; Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707–7927; Delta Dental Plan of California, 7667 Folsom Boulevard, Sacramento, CA 95826–9023; FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502–4900; and Foundation Health Federal Services, Inc., 3400 Data Drive, Rancho Cordova, CA 95670–7955.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

All individuals who seek information concerning health and dental care under CHAMPUS/CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting inquiries received from private individuals for information on CHAMPUS/CHAMPVA and replies thereto; congressional inquiries on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 41 CFR 101–11.000; chapter 55, 10 U.S.C.; section 613, chapter 17, 38 U.S.C.; and Executive Order 9397.

PURPOSE(S):

To maintain and control records pertaining to requests for information concerning the processing of individual CHAMPUS/CHAMPVA claims and the benefit structure and procedures of CHAMPUS/CHAMPVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Establish eligibility, respond to inquiries from individuals, and respond to inquiries from congressional offices

made at the request of the individual covered.

Referral of the Secretary of the Department of Health and Human Services and/or Secretary of the Department of Veterans Affairs consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of CHAMPUS.

Disclosure to other third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The "Blanket Routine Uses" published at the beginning of OSD's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records maintained on magnetic tape and disc. Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by case number, sponsor name and/or Social Security Number, and inquirer name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Automated segments are accessible only by authorized persons possessing user identification codes. OCHAMPUS buildings are protected by Department of Defense security force and/or military police security force.

RETENTION AND DISPOSAL:

Automated indexes are permanent. Paper records are retained in active file until end of calendar year in which closed, held two additional years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Public and Beneficiary Relations Division, OCHAMPUS, DoD, Aurora, Colorado 80045–6900. Telephone (303) 361–8220.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the OCHAMPUS, Privacy Act Officer, Aurora, Colorado 80045–6900.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the OCHAMPUS, Privacy Act Officer, Aurora, Colorado 80045–6900.

Written requests for information should include the full name of the individual, military sponsor's name and Social Security Number, current address and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that medical record.

For personal visits to examine records, the individual should be able to provide some acceptable identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records, contesting contents, and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Services, consultants, and individuals.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DOCHA 07

System name:

Medical Claim History Files (52 FR 22840, June 16, 1987).

Changes:

* * * * *

System location:

Delete entry and replace with "Primary system is located OCHAMPUS, DoD, Aurora, Colorado 80045–6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR), APO New York 09102–5000; Fiscal intermediaries/Constractors (FIs) under contract to OCHAMPUS. Each company listed below maintains claim files on beneficiaries in their respective geographical areas. Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–3408; Uniformed Services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201–6660; Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501–4026; Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707–7927; Delta Dental Plan of California, 7667 Folsom Boulevard, Sacramento, CA 95826–9023; FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502–4900; and Foundation Health Federal Services, Inc., 3400 Data Drive, Rancho Cordova, CA 95670–7955.

* * * * *

Purpose(s):

Delete the first four words and replace with "OCHAMPUS and its contractors".

* * * * *

Record source categories:

Add "dentists," after the word "Physicians".

* * * * *

DOCHA 07

SYSTEM NAME:

Medical and Dental Claim History Files.

SYSTEM LOCATION:

Primary system is located at OCHAMPUS, DoD, Aurora, Colorado 80045–6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR), APO New York 09102–5000; and Fiscal intermediaries/Contractors (FIs) under contract to OCHAMPUS. Each company listed below maintains claim files on beneficiaries in their respective geographical areas. Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–3408; Uniformed Services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201–6660; Blue Cross-

Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501–4026; Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707–7927; Delta Dental Plan of California, 7667 Folsom Boulevard, Sacramento, CA 95826–9023; FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502–4900; Foundation Health Federal Services, Inc., 3400 Data Drive, Rancho Cordova, CA 95670–7955.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible beneficiaries and all individuals who seek health care under CHAMPUS/CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains claims, billings for services, applications or approval forms, medical records, dental records, family history files, records on appeals and hearings, or any other correspondence, memorandum, or reports which are acquired or utilized in the development and processing of CHAMPUS/CHAMPVA claims. Records are also maintained on health care and dental care demonstration projects, including enrollment and authorization agreements, correspondence, memoranda, forms and reports which are acquired or utilized during the projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 41 CFR 101–11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and Executive Order 9397.

PURPOSE(S):

OCHAMPUS and its contractors use the information to control and process health care benefits available under CHAMPUS including the processing of medical claims, dental claims, the control and approval of medical and dental treatments, and necessary interface with providers of health/dental care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits and civil or criminal litigation related to the operation of CHAMPUS.

Information from CHAMPVA claims will be given to the Department of Veterans Affairs.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

Issuance of deductible certificates; responding to inquires from congressional offices, made at the request of the person to whom a record pertains; and conducting audits of FI processed claims to determine payment and occurrence accuracy of the FI's adjudication process.

Process and control of recoupment claims in favor of the United States arising under the Federal Claims Collection Act. In connection with these recoupment claims, information may be disclosed to:

a. the U.S. Department of Justice, including U.S. Attorneys, for legal action and final disposition of the recoupment claims.

b. The Internal Revenue Service to obtain current address information on delinquent accounts receivable (automated controls exist to preclude redisclosure of solicited IRS address information) and to report amounts written-off as uncollectible as taxable income.

c. Private collection agencies for collection action when deemed to be in the best interest of the U.S.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records maintained on magnetic tape and disc. Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by sponsor's Social Security Number; beneficiary's name; classification of medical diagnosis, procedure code, or geographical location of care provided; and selected utilization limits.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Decentralized automated segments within FI operations are accessible on-line only to authorized persons possessing user identification codes. The automated portion of the Primary System is accessible only through the medium of OCHAMPUS prepared computer programs resulting in a printout of the data. OCHAMPUS buildings are protected by Department of Defense security force and/or military police security force.

RETENTION AND DISPOSAL:

Records maintained on magnetic tape are individual annual files and are permanent. Paper records are closed out at the calendar year end in which processed, held one additional year, and transferred to the Federal Records Center. Federal Records Centers will destroy after an additional four-year retention.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Chief, Contract Management Division, OCHAMPUS, DoD, Aurora, Colorado 80045–6900. Telephone (303) 361–8043.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquires to the OCHAMPUS, Privacy Act Officer, Aurora, Colorado 80045–6900.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the OCHAMPUS, Privacy Act Officer, Aurora, Colorado 80045–6900.

Written requests for information should include the full name of the beneficiary, the full name and Social Security Number of the sponsor, current address, and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should provide some acceptable identification such as

driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records, contesting contents, and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81; 32 CFR Part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians, dentists, hospitals, and other sources of care; individuals; insurance companies; and consultants.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

[FR Doc. 91-27177 Filed 11-12-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Privacy Act of 1974; Record System Amendment

AGENCY: Department of the Army, DOD.

ACTION: Amendment of a records systems.

SUMMARY: The Department of the Army proposes to amend two record systems in its inventory of record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on December 19, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to Mr. Walter Crass, Office of Systems Management Branch (ASOP-MP) Ft. Huachuca, AZ 85613-5000.

SUPPLEMENTARY INFORMATION: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow).
51 FR 23576, Jun. 30, 1986.
5 FR 30900, Aug. 29, 1986.
51 FR 40479, Nov. 7, 1986.
51 FR 44361, Dec. 9, 1986.
52 FR 11847, Apr. 13, 1987.
52 FR 18798, May 19, 1987.
52 FR 25905, Jul. 9, 1987.
52 FR 32329, Aug. 27, 1987.
52 FR 43932, Nov. 17, 1987.
53 FR 12971, Apr. 20, 1988.
53 FR 16575, May 10, 1988.
53 FR 21509, Jun. 8, 1988.
53 FR 28247, Jul. 27, 1988.
53 FR 28249, Jul. 27, 1988.
53 FR 28430, Jul. 28, 1988.
53 FR 34576, Sep. 7, 1988.
53 FR 49586, Dec. 8, 1988.
53 FR 51580, Dec 22, 1988.
54 FR 10034, Mar. 9, 1989.
54 FR 11790, Mar. 22, 1989.
54 FR 14835, Apr. 13, 1989.
54 FR 46965, Nov. 8, 1989.
54 FR 50263, Dec. 5, 1989.
55 FR 13935, Apr. 13, 1990.
55 FR 21897, May 30, 1990 (Army Address Directory).
55 FR 41743, Oct. 15, 1990.
55 FR 46707, Nov. 6, 1990.
55 FR 46708, Nov. 6, 1990.
55 FR 48678, Nov. 21, 1990.
55 FR 48671, Nov. 21, 1990 (Amended ID Numbers).
55 FR 51467, Dec. 14, 1990.
56 FR 7018, Feb. 21, 1991.
56 FR 15593, Apr. 17, 1991.
56 FR 21134, May 7, 1991.
56 FR 27949, Jun. 18, 1991.
56 FR 42986, Aug. 30, 1991.
56 FR 42991, Aug. 30, 1991.
56 FR 42995, Aug. 30, 1991.
56 FR 46162, Sep. 10, 1991.
56 FR 48168, Sep. 24, 1991.
56 FR 48523, Sep. 25, 1991.
56 FR 508864, Oct. 9, 1991.

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), which requires the submission of altered system reports. The specific changes to the record systems being amended are set forth below, followed by the record system notices, as amended, published in their entirety.

Dated: November 6, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0640-10aTAPC

System name:

Military Personnel Records Jacket Files (50 FR 22179, May 29, 1985).

Changes:

System name:

After "Files" add "(MPRJ)".

System location:

Add at the end "Official mailing addresses are published as an appendix to the Army's compilation of record systems notices."

* * * * *

Categories of records in the system:

Add "/Certificate of Release or Discharge from Active Duty" after "transfer/discharge report"; delete "VA" and substitute "Department of Veterans Affairs"; delete "similar relevant matters" and substitute "similar military documents prescribed for filing by Army regulations or directives."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the General Services Administration for records storage and archival services and for printing of directories and related material which includes personal data.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs to provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Account Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to Executive Order 10450.

To the Federal Emergency Management Agency to facilitate participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DOD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

To the Military Banking Facilities Overseas. Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restriction is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any Department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statues take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply to these categories of records.

County and city welfare organizations to provide information needed to consider applications for benefits.

Penal institutions to provide health information to aid patient care.

State, county, and city officials to include law enforcement authorities to provide information to determine benefits or liabilities, or for the investigation of claims or crimes.

Patriotic societies incorporated, pursuant to 36 U.S.C., in consonance with their respective corporate missions when used to further the welfare, morale, or mission of the soldier. Information can only be disclosed only if the agency which receives it adequately prevents its disclosure to persons other than their employees who need such information to perform their authorized duties.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system, except for those specifically excluded categories of records.

* * * * *

Retrievability:

Delete entry and replace with "By individual's name and/or Social Security Number."

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature."

Records access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature."

* * * * *

A0640–10aTAPC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ).

SYSTEM LOCATION:

Active and Reserve Army Commands/field operating agencies, installations, activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted, warrant and commissioned officers on active duty in the U.S. Army; enlisted, warrant and commissioned officers of the U.S. Army Reserve in active reserve (unit or non-unit) status; retired persons; commissioned/warrant officers separated after June 30, 1917

and enlisted personnel separated after October 31, 1912.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records reflecting qualifications, emergency data, enlistment and related service agreement/extension/active duty orders; military occupational specialty evaluation data; group life insurance election; record of induction; security questionnaire and clearance; transfer/discharge report/Certificate of Release or Discharge from Active Duty; language proficiency questionnaire; police record check; statement of personal history; application for ID; Department of Veterans Affairs compensation forms and related papers; dependent medical care statement and related forms; training and experience documents; survivor benefit plan election certificate; efficiency reports; application/nomination for assignment; achievement certificates; record of proceeding and appellate or other supplementary actions, Article 15 (10 U.S.C. 815); weight control records; personnel screening and evaluation records; application/prior service enlistment documents; certificate barring reenlistment; waivers for enlistment; physical evaluation board summaries; service record brief; Army School records; classification board proceedings; correspondence relating to badges, medals, and unit awards, including foreign decorations; correspondence/letters/administrative reprimands/censures/admonitions relating to apprehensions/confinement/discipline; dependent travel and movement of household goods; personal indebtedness correspondence and related papers; documents relating to proficiency pay, promotion, reduction in grade, release, retirement temporary duty, individual flight records, physical examination records, aviator flight record, instrument certification papers, duty status, leave, and similar military documents prescribed for filing by Army regulations or directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

Personnel records are created and maintained to manage the member's Army Service effectively, document historically the member's military service, and safeguard the rights of the member and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the General Services Administration for records storage and archival services and for printing of directories and related material which includes personal data.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs to provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Account Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to Executive Order 10450.

To the Federal Emergency Management to facilitate participation of Army members in civil defense planning, training, and emergency operations pursuant to the military support of civil defense as prescribed by DOD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

To the Military Banking Facilities Overseas. Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking

facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirecly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statues take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply to these categories of records.

County and city welfare organizations to provide information needed to consider applications for benefits.

Penal institutions to provide health information to aid patient care.

State, county, and city officials to include law enforcement authorities to provide information to determine benefits or liabilities, or for the investigation of claim or crimes.

Patriotic societies incorporated, pursuant to 36 U.S.C., in consonance with their respective corporate missions when used to further the welfare, morale, or mission of the soldier. Information can only be disclosed only if the agency which receives it adequately prevents its disclosure to persons other than their employees who need such information to perform their authorized duties.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAILING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated individuals whose official duties require access; they are transferred from station to station in personal possession of the individual whose record it is or, when this is not feasible, by U.S. Postal Service.

RETENTION AND DISPOSAL:

The maintenance, forwarding, and disposition of the MPRJ (DA Form 201) and its contents are governed by Army Regulations 640–10, Individual Military Personnel Records, and 635–10, Processing Personnel for Separations.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200; for discharged and decreased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

RECORDS ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10bTAPC

System name:

Official Military Personnel File (56 FR 50883, October 9, 1991).

Changes:

* * * * *

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

Delete the last two paragraphs and replace with

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply to these categories of records.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system, except for those specifically excluded categories of records."

* * * * *

A0640–10bTAPC

SYSTEM NAME:

Official Military Personnel File.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandra, VA 22332–0400 for active duty officers.

U.S. Army Enlisted Evaluation and Records Center, Fort Benjamin Harrison, IN 46249–5301 for active duty enlisted personnel.

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO

63132–5200 for retired and reserve personnel.

National Personnel Records Center, General Services Administration (Military), 9700 Page Boulevard, St Louis, MO 63132–5100, for discharged or deceased personnel.

An automated index exists at the U.S. Army Reserve Personnel Center showing physical location of the Official Military Personnel of retired and separated service members.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each individual on active duty in the U.S. Army is enlisted, appointed, or commissioned status; and each individual who was an enlisted, appointed, or commissioned member of the U.S. Army and who was completely separated by discharge, death, or other termination of individual's military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Veterans Administration benefit forms; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; field for active duty; transfer or discharge report/Certificate of Release or Discharge from Active Duty; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks, consent/declaration of parent/guardian; Army Reserve Officers Training Corps supplemental agreement; award recommendations; academic reports; casualty report; U.S. field medical card; retirement points, deferment; preinduction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment; enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, 10 U.S.C., section 815 appellate actions; determinations of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for entlistment; acknowledgments of service requirements; retired benefits; application for review by physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit transcripts; flight status board reviews; assignment agreements, limitations/waivers/election and travel; efficiency appeals; promotion/reduction/recommendations, approvals/declinations announcements/notifications, reconsiderations/worksheets elections/letters or memoranda of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, in-service details, determinations, reliefs, component; awards, pay entitlement, released, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

These records are created and maintained to manage the member's Army service effectively; document historically a member's military service, and safeguard the rights of the member and the Army.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the General Services Administration for records storage and archival services and for printing of directors and related material which includes personal data.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs to provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Account Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive

positions pursuant to Executive Order 10450.

To the Federal Emergency Management Agency to facilite participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DOD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

To the Military Banking Facilities Overseas. Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statues take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply to these categories of records.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system, except for those specifically excluded categories of records

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:

Alphabetically by surname; automated data retrievable by name, Social Security Number, or ADP parameter; records of reserve, retired, and deceased persons retrieved by Social Security Number terminal digit sequence.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent; retained in active file until termination of service, following which they are retired to the U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who peformed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enlistment, appointment, or commission related forms pertaining to individual's military status; academic, training, or qualifications records acquired prior to or during military service; correspondence, forms, records, documents and other relevant papers in Department of the Army, other Federal agencies, or state and local governmental entities; civilian education and training institutions; and members of the public when information is relevant to the Service Member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–27178 Filed 11–12–91; 8:45 am]

BILLING CODE 3810–01–M

National Advisory Panel on the Education of Handicapped Dependents; Meeting

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Assistant Secretary of Defense (Force Management & Personnel).

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice also describes the functions of the Panel. Notice of this meeting is required under the National Advisory Act. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the Office of Dependents Schools (ODS) special education coordinator.

DATES: December 3–5 1991.

ADDRESSES: Courtyard by Marriott, 2700 Eisenhower Avenue, Alexandria, VA (703) 329–2323.

FOR FURTHER INFORMATION CONTACT: Mrs. Trudy Paul, Special Education Coordinator, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia 22331–1100 (703/325–7810).

SUPPLEMENTARY INFORMATION: The National Advisory Panel on the Education of Handicapped Dependents is established under section 613 of the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401, Pub. L. 94–142). The Panel is directed to: (1) Review information regarding improvements in services provided to handicapped students in DoDDS; (2) receive and consider the views of various parents, students, handicapped individuals, and professional groups; (3) review the findings of fact and decision of each impartial due process hearing; (4) assist in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties; (5) make recommendations based on program and operational information for changes in the budget, organization, and general management of the special education program, and in policy and procedure; (6) comment publicly on rules or standards regarding the education of handicapped children; and (7) submit an annual report of its activities and suggestions to the Director, DoDDS, by July 31 of each year. The Panel will review the following areas: Quality Indicators for special education program, preschool plans for young children with disabilities, special education transition program, Individuals with Disabilities Amendments Act (IDEA), eligibility criteria, and related services.

Dated: November 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–27174 Filed 11–12–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management Command (MTMC); Implementation of Certificate of Independent Pricing (CIP) and Proposed Amendment to Personal Property Traffic Management Regulation DOD 4500.34–R

SUMMARY: This is to inform all Department of Defense (DOD)-approved domestic and international household goods, unaccompanied baggage, mobile home, and boat carriers that the Military Traffic Management Command (MTMC), Directorate of Personal Property (MTPP), will require that all DOD-approved carriers submit a properly executed CIP in order for rates to be accepted by MTMC.

The CIP requirement will also be added to appendices A and E to DOD 4500.34–R.

EFFECTIVE DATE: December 13, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Rosemarie F. Guzzardo or Mrs. Sylvia Walker at (703) 756–1190, Headquarters, Military Traffic Management Command, ATTN: MTPP–C (Mrs. Guzzardo or Mrs. Walker), room 408, 5611 Columbia Pike,Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: Thirty days after the publication of this Item, MTPP will send new Tender of Service Signature Sheets (TOSS) to all DOD-approved carriers, with accompanying instructions. Carriers are required to complete and return the form to MTPP not later than 30 days upon receipt of the form.

The CIP must be signed by the same person that would sign manual rate tenders or the certifications of multimedia-furnished rates.

In accordance with MTMC Regulation 15–1, paragraph 5(b)(3), carriers not complying with this administrative requirement may be placed in nonuse for 30 days. If a CIP is not received within the 30-day period, the carrier's DOD-approval may be automatically revoked and its rates removed. See paragraph 56 of Tender of Service, appendix A, and paragraph 30 of Tender of Service appendix E (mobile homes and boats), DOD Regulation 4500.34–R.

MTMC is also amending DOD Regulation 4500.34–R, appendices A and E, to state that the CIP will be a mandatory document submission for participation in the DOD Personal Property Movement and Storage Program. A carrier will be required to submit the CIP with the TOSSS. A property executed CIP must be on file at MTMC before rate submissions are accepted.

Part IV of the TOSSS has been modified, indicating "(F) Certificate of Independent pricing." The CIP must be signed by all parties submitting rates to MTMC. Any TOSSS submission without the CIP will be automatically rejected. MTMC will also be adding the following paragraph to the Uniform Tender of Rates and/or Changes form (manual tenders) and to the rate tape certification page which accompanies rates submitted via multimedia methods: "By offering rates for services to the U.S. Government, the carrier official certifies the understanding and continued compliance with the previously executed CIP which is incorporated hereto by reference. The executed CIP is kept on file in the carrier's qualification file as an attachment to the carrier's TOSSS."

The amendment to appendices A and E of DOD Regulation 4500.34–R are:

Appendix A:

1. Items 56 through 62 are renumbered Items 57 through 63, respectively.
2. A new Item 56 is added:

"56. Certificate of Independent Pricing (CIP)

"I agree to execute and comply at all times with the CIP attached to the tender of Service Signature Sheet. Failure to comply with the CIP will make my company and me ineligible to participate in the Department of Defense Personal Property Shipment and Storage Program, and the sole determination in this matter will rest with the Department of Defense through the Military Traffic Management Command."

Appendix E:

1. Items 31 through 34 are renumbered Items 32 through 35, respectively.
2. A new Item 31 is added:

"31. Certificate of Independent Pricing (CIP)

I agree to execute and comply at all times with the CIP attached to the Tender of Service Signature Sheet. Failure to comply with the CIP will make my company and me ineligible to participate in the Department of Defense Personal Property Shipment and Storage Program, and the sole determination in this matter will rest with the Department of Defense through the Military Traffic Management Command.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-27213 Filed 11-12-91; 8:45 am]

BILLING CODE 3710-08-M

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Santa Paula Creek Flood Control Study, Ventura County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

1. Summary: Santa Paula Creek is a major tributary of the Santa Clara River that runs through the city of Santa Paula in Ventura County, California, about 60 miles northwest of Los Angeles. The Santa Paula Creek project was authorized by the Flood Control Act of 1948 and initially funded for construction in FY 1971. Final Environmental Statement for the proposed project was prepared in March 1972. In January 1974, Phase I of the authorized plan (1800 feet of concrete channel) was completed. A June 1976 court injunction halted further construction because of NEPA and environmental concerns. Debris and boulders deposited in channel during floods of 1978 and the early 1980's damaged the Phase I channel which cannot function properly unless additional upstream work is completed. A new study has been initiated to evaluate changed conditions in the project area and develops alternatives to resolve the flood threat to the community.

Proposed Action. Repair of completed concrete channel, or removal and restoration of the channel reach to pre-project conditions. Study of new alternatives to alleviate continuing flood control problem.

2. Alternatives: A full range of alternatives to the proposed action will be addressed and evaluated, including the No Action Alternative. The development of alternatives will consider project feasibility. Following alternatives will be studied for the proposed action.

1. Repair/removal of completed channel;
2. Modify existing channel;
3. Debris basin(s);
4. In-stream sediment basins;
5. Levee(s);
6. Non-structural improvements including maintenance of existing channels, floodproofing, relocation, and razing of structures.

3. Scoping Process: Potential impacts associated with the proposed action and alternatives will be fully evaluated. Resource categories that will be analyzed are: land use, agricultural, physical environment, geologic formation, biological resources, air quality, water quality, groundwater, cultural resources, socioeconomic and safety. The COE public involvement program will include a public scoping meeting. The scoping meeting is scheduled for 20 November 1991, Santa Paula City Hall, at 7 p.m., 970 Ventura Street, Santa Paula, California.

A mailing list will also be established so that pertinent data may be distributed to interested agencies, interest groups and individuals.

ADDRESSES: Questions about the proposed action and Draft Environmental Impact Statement can be answered by Mr. Jim Hutchison, South Coast Section at (213) 894-3057, or Ms. Joy Jaiswal, Environmental Design Section, at (213) 894-0241 U.S. Army Corps of Engineers.

Dated: November 5, 1991.

Kenneth A. Steele,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer for Civil Works.

[FR Doc. 91-27226 Filed 11-12-91; 8:45 am]

BILLING CODE 3710-KF-M

ENDANGERED SPECIES COMMITTEE

Appointment of Administrative Law Judge, Establishment of Dates and Locations for Prehearing Conference and Hearing, and Other Hearing-Related Matters

AGENCY: Endangered Species Committee.

ACTION: Notice of Appointment of Administrative Law Judge, Establishment of Dates and Locations for Prehearing Conference and Hearing, Opportunity to File Motions to Intervene and Deadline for Filing Prehearing Motions, Information on Issues to be Addressed at the Hearing, and other Hearing-Related Matters.

SUMMARY AND DATES: On September 11, 1991 the Bureau of Land Management, Department of the Interior, filed an application with the Secretary of the Interior seeking an exemption from section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in the Bureau's 1991 timber sales program in Oregon. See 56 FR 48546, September 25, 1991, the **Federal Register** notice announcing receipt of the application. In accordance with 16 U.S.C. 1536(g) and 50 CFR 452.03, on October 1, 1991 the Secretary of the Interior made certain threshold determinations concerning the application and concluded that the application qualifies for consideration by the endangered Species Committee. See 56 FR 54562, October 22, 1991, the **Federal Register** notice announcing the Secretary's determinations.

Under 16 U.S.C. 1536(g)(5) the Secretary, who serves as Chairman of the Endangered Species Committee, normally has 140 days from the date he determines the application qualifies for consideration to conduct a fact-finding hearing to develop the record from which he will prepare a report to the Committee under 16 U.S.C. 1536(g)(4)-(8) and 50 CFR part 452, and to complete the report and provide it to the Committee. However, section 1536(g)(5) permits this 140-day period to be extended upon the mutual agreement of the Secretary and the exemption applicant.

The Secretary of the Interior has designated Harvey C. Sweitzer, an administrative law judge, to conduct the fact-finding hearing. The administrative law judge will be assisted by the staff of the Endangered Species Committee, which will include the Division of General Law, Office of the Solicitor, Department of the Interior, and the Office of Program Analysis, Department

of the Interior. The hearing will take place in Portland, Oregon beginning at 9 a.m. on January 8, 1992, at 911 Federal Building (Old Bonneville Power Administration Building), 911 Northeast 11th Street, Portland, Oregon 97208. Additional days have been set aside should they be necessary.

The administrative law judge will conduct a prehearing conference beginning at 9 a.m. on December 3, 1991, in Conference Room C, 911 Federal Building (Old Bonneville Power Administration Building), 911 Northeast 11th Street, Portland, Oregon 97208. The conference will proceed until concluded. The prehearing conference will deal with the matters cited in 50 CFR 452.05(b)(1), as follows:

(1) The possibility of obtaining stipulations, admissions of fact or law, and agreement to the introduction of documents;

(2) The limitation of the number of witnesses, the length of direct presentations, and consolidation of participants;

(3) Questions of fact relating to the criteria of Section 7(h);

(4) Questions of law which may bear upon the course of the hearings;

(5) Prehearing motions, including motions for discovery as permitted in the regulations, at 50 CFR 452.05(b)(1)(iv); and

(6) Any other matter which may aid in the disposition of the proceedings .

Participants in the prehearing conference will be the Bureau of Land Management, the U.S. Fish and Wildlife Service, and any individuals or groups that have been permitted to intervene by the administrative law judge in accordance with 50 CFR 452.06(b). Any entity wishing to intervene in this matter must file a motion to intervene no later than 7 days prior to the date of the prehearing conference. A motion to intervene must state the movant's name and address, identify its representative, if any, set forth the interest of the movant in the proceeding, and show that the movant's participation would assist in the determination of the issues in question and that no other participants will adequately represent movant's interests. Under the Endangered Species Committee's regulations, the exempt applicant (the Bureau of Land Management in this case) and the U.S. Fish and Wildlife Service are automatically parties to the proceeding. See 50 CFR 452.06(a).

ADDRESSES: Motions should be filed with Administrative Law Judge Sweitzer, Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 6432 Federal Building, Salt Lake City, Utah 84138. Five copies of all motions and other documents filed with the administrative law judge must be sent to Ms. Barbara Abate, room 6531, U.S. Department of the Interior, Washington, DC 20240. Any documents filed with the administrative law judge must also be served on all participants. The participants' addresses are: (1) Bureau of Land Management, c/o Paul Smyth, Esq., room 6311, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240; (2) U.S. Fish and Wildlife Service, c/o Dan Shillito, Esq., room 6560, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240. Correspondence to the Chairman or the Committee should be addressed to the Executive Secretariat, U.S. Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the exemption application may be inspected without charge and may be obtained for a fee of $221.00 at the Natural Resources Library, 1st Floor, Department of the Interior, 1849 C St., NW., Washington, DC 20240. The Administrative Record can also be reviewed on a laser image storage device at the Library, from 1 p.m. until 5 p.m. Monday through Friday. In addition, copies of the application are being offered for sale by the Superintendent of Documents, and will also be available for examination free of charge at all U.S. Government Depository libraries. Further, the application and the Administrative Record can be reviewed in Portland, Oregon at the following location from 8–11 a.m. and 1–3 p.m. Pacific Time: Office of Environmental Affairs, Department of the Interior, 500 N.E. Multnomah St., Suite 600, Portland, Oregon 97232–2036. Because of the small size of the reviewing facility, persons wishing to review the documentation should telephone the facility at (503) 231–6157 or FTS 429–6157 to establish a time for the review. Questions concerning the exemption process may be addressed to Jon H. Goldstein at (202) 208–4077.

SUPPLEMENTARY INFORMATION: On September 11, 1991, the Director of the Bureau of Land Management submitted an application for exemptions from the requirements of section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1531 *et seq.* The proposed agency actions for which exemptions are sought involve timber sales on 44 tracts remaining in the Bureau of Land Management's 1991 timber sales program in Oregon. The U.S. Fish and Wildlife Service found that the proposed agency actions would jeopardize the continued existence of the northern spotted owl.

The Secretary of the Interior has determined that certain threshold criteria established by the Endangered Species Act, 16 U.S.C. 1536(g)(3); 50 CFR 452.03, have been met. The next step in the exemption process is the holding of a hearing to develop the record upon which the Secretary of the Interior will base his report to the Endangered Species Committee under 16 U.S.C. 1536(g) (4) and (5) and 50 CFR part 452.

In order to grant an exemption the Endangered Species Committee must make positive findings on the following criteria:

(1) There are no reasonable and prudent alternatives to the agency action;

(2) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(3) The action is of regional or national significance; and

(4) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources with respect to the agency action that had the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures that would not violate section 7(a)(2) of the Endangered Species Act.

For purposes of the hearing and the Secretary's report, in which the Secretary will make findings concerning these criteria, the Bureau of Land Management has the burden of going forward with evidence concerning the criteria for exemption. See 50 CFR 452.05(e). In order to assure that the participants in the hearing process understand clearly the kinds of information necessary for preparation of the Secretary's report and that they are prepared to submit necessary information for the record, the following questions are provided to illustrate the kind of specific information that will be sought for the record during the hearing.

To clarify the intent of each question, the questions are organized under headings that correspond to the criteria on which the Committee must make findings. To the extent practicable, answers should be quantified and precise, and should include an explanation of how calculations and estimates were made.

It should be emphasized that the questions which follow are illustrative, and designed to provide guidance. They should not be construed as exhaustive.

A. Reasonable and Prudent Alternatives to the Proposed Action

The section 7 regulations define "reasonable and prudent alternatives" in a manner that limits them to the jurisdiction and authority of the action agency, in this case the Bureau of Land Management. In order to determine that there are no reasonable and prudent alternatives, the Endangered Species Committee must review the broad range of alternatives available to the Bureau of Land Management and determine whether they meet the requirements of the Endangered Species Act.

"Reasonable and prudent alternatives" refer to alternative actions that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Bureau of Land Management's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director of the Fish and Wildlife Service believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

The questions in this section are intended to clarify what alternatives were considered by the Bureau of Land Management and the Fish and Wildlife Service and whether there are other reasonable and prudent alternatives that have not been considered by either agency.

A.1. What alternatives to the proposed actions other than those listed in the biological opinions were considered by the Bureau of Land Management and the Fish and Wildlife Service? Why were they not adopted? Were harvesting methods other than clearcutting considered?

A.2. What would be the extent of delays in timber sales and harvest if the reasonable and prudent alternatives suggested by the Fish and Wildlife Service were adopted? What would be the impact on local and regional economies of such delays? What would be the fiscal impact of such delays on the county governments in the short run? In the long run? What would be the fiscal impact of such delays on the State government in the short run? In the long run? What would be the impact on Federal revenues and costs?

A.3. Can delays in timber sales be offset by subsequently accelerating harvesting of the timber? To what extent, if any, would fiscal and economic impacts caused by delays be reduced by subsequently harvesting the timber more quickly? Does the Bureau of Land Management have the authority and/or flexibility in its timber program to accommodate the delays and subsequent acceleration in harvesting?

A.4. In the exemption application, the Bureau of Land Management disputed whether the alternatives provided by the Fish and Wildlife Service were reasonable and prudent. The basis for the Bureau of Land Management's position was that the Bureau has a legislative "mandate" to contribute to the economic stability of local communities and to avoid "boom and bust" cycles. What is the precise nature of the Bureau of Land Management's "mandate," including its specific statutory requirements, limitations, boundaries, and legislative guidance on resolving conflicts with other mandates? What does the term "boom and bust" mean?

A.5. Are there other alternatives which are potentially reasonable and prudent that neither the Bureau of Land Management nor the Fish and Wildlife Service have considered? What effects, if any, might these have on the northern spotted owl?

A.6. Are there any sales tracts in the Bureau of Land Management's FY 1992 program that may be substituted for one or more of the 44 tracts?

B. Benefits of the Proposed Action Compared With Benefits of Alternative Courses of Action

In order to grant an exemption, the Endangered Species Committee must make a determination that the benefits of the proposed action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and that such action is in the public interest. Thus, for each alternative course of action that the Committee considers, there must be an assessment of its benefits (positive and negative).

Alternative courses of action, as distinct from reasonable and prudent alternatives, need not be limited to the objectives of the proposed project or the Bureau of Land Management's jurisdiction. These can include other Federal actions, as well as State and private actions.

For example, the Endangered Species Committee could consider the benefits of reducing log exports, increasing log imports, increased harvesting from other domestic sources (such as public or private sources in the Northwest and elsewhere), or increased use of substitute materials (e.g., aluminum, brick, adobe, etc.). In addition, taking no action (i.e., allowing the normal market forces to work themselves out in response to the restriction of timber supply resulting from not conducting the proposed sales) may be regarded as an alternative course of action.

Benefits include but are not necessarily limited to economic, sociological, and ecological elements. For purposes of presenting evidence to the Committee, the term "economic benefits" should represent a *net* value taking into consideration both benefits and costs. For example, in the present case, lost or diminished recreational opportunities or potential damage to commercial fisheries should be balanced against the benefits of the timber harvest.

B.1. Clearcutting is the proposed harvesting technique for the 44 sales. What other methods of harvesting could be used on some or all of the tracts that would reduce the impacts on the northern spotted owl?

B.2. What would be the economic impacts of alternative methods of harvesting? Would the timber be more expensive to harvest? If so, how much more expensive? If there are increased harvesting costs, will they be reflected in the price of processed timber? Regionally? Nationally?

B.3. Would employment and income be different in the counties in question under alternative methods of harvesting?

B.4. Could the U.S. Forest Service increase its harvest by 224 million board feet in Western Oregon? Do private timber companies have the flexibility to increase their harvest in the short run? Are there readily available domestic sources of timber in other States that could quickly meet the Bureau of Land Management "deficit" of 224 million board feet?

B.5. What non-economic effects or benefits other than the impacts on the northern spotted owl would be associated with harvesting these tracts by clearcutting?

B.6. What would be the non-economic effects or benefits associated with harvesting these tracts with techniques other than clearcutting?

B.7. What would be the non-economic effects or benefits associated with potential alternative courses of action?

C. Regional or National Significance

In order to determine the regional or national significance of the proposed actions, the Committee will seek information on the direct, indirect, and induced effects of the proposed actions. Direct effects are those that have a direct impact on resources employed in timber harvesting and processing (Standard Industrial Classification 24, hereinafter, SIC 24). Indirect effects are those that affect businesses and

individuals that service and supply timber harvesting and processing firms. Induced effects are those that occur broadly throughout the economy due to reduced spending stemming from lower income levels.

C.1. What amount of revenue (both actual and as a percentage of their total revenue) did Oregon counties receive from the Bureau of Land Management in FY 1991? What would Oregon counties have received from the Bureau of Land management in FY 1991 if some or all of the 44 sales had been conducted? How does payment in lieu of taxes (PILT) change with and without these sales?

C.2. To what extent do the economic effects of the proposed sales extend beyond the counties in which the sales would be located?

C.3. What would be the level of employment and income in the counties what would be affected by these sales with and without the proposed sales?

C.4. What will be the effect, if any, on the number and timing of mill closures if exemptions are granted for any or all of the proposed sales?

C.5. What would be the value of the major assets (housing stock, mills, other commercial facilities) in the affected counties with and without the proposed sales?

C.6. What is the estimated rate of reemployment likely to be for workers displaced by not harvesting some or all of these tracts? What is the likelihood that workers displaced by not harvesting some or all of these 44 tracts will be reemployed locally? Regionally?

C.7. What is the status of the Oregon economy? How diversified is it? What proportion of economic activity in Oregon is accounted for by the forest products industry? How quickly might any increased unemployment that would occur if exemptions are not granted be absorbed? Locally? Regionally? Nationally?

C.8. What public programs (city, county, State, and Federal) are available to mitigate any employment and income effects associated with not harvesting some or all of these 44 tracts (e.g., loans, grants, tax advantages, cost-sharing arrangements, job training, education assistance, income support, economic development assistance, small business development assistance, basic needs assistance)?

C.9. Suppose that exemptions are not granted, and timber supplies from Oregon are reduced. Will the price of timber rise and will producers elsewhere respond by increasing output? Is there reason to believe that a reduced harvest level in Western Oregon, with its associated decreases in employment and income, will not be at least partially offset by increased harvests, employment, and income elsewhere in the nation? how much of any reduction in employment and income in Western Oregon will be offset by increases in economic activity elsewhere?

C.10. Suppose that exemptions are not granted, and there is a resultant increase in the price paid for timber by timber processors in Western Oregon. Would any such price increase induce a diversion to the domestic market of timber originally destined for export? How large a response would occur? How much of reduction in employment and income in SIC 24 (timber and plywood) would be offset as a result of such a diversion? Would there be a corresponding decrease in employment and income in the export sector in Western Oregon? What will be the net effect on employment and income regionally? Nationally?

C.11. Are there other single-industry communities (e.g., areas heavily reliant on a military base, mining, or the production of a single product) that have suffered economic setbacks which are similar to the current situation in Oregon? Can the experience of these communities help us anticipate impacts to Oregon communities from not cutting some or all of the 44 tracts? Was there outmigration to other parts of the region or nation? What local alternative employment opportunities were there? Did displaced workers suffer signficiant reductions in income and wage rates when they were reemployed? How long did it take for the displaced workers to become reemployed? What was the availability of assistance from all sources for all or a portion of the transition period?

C.12. According to one estimate by the U.S. Forest Service, cutting restrictions on Federal lands in the Pacific Northwest will raise the price of an average new home by $300. What effect, if any, would there be on home prices nationally if some or all of the 44 tracts in question cannot be harvested?

C.13. There are already restrictions on exports of timber from State and Federal lands. Would restrictions on log exports from private lands help to mitigate any losses in employment and income that may result from not harvesting some or all of these 44 tracts? What economic sectors might gain from such a change, in public policy and what economic sectors might lose? For example, how would such restrictions affect those resources employed in international trade?

D. Mitigation

If the Endangered Species Committees grants exemptions, it must establish reasonable mitigation and enhancement measures as are necessary and appropriate to minimize the adverse effects of the proposed actions on the species. In its exemption application, the Bureau of Land Management proposed certain mitigation actions. Since the proposed actions involve 44 non-contiguous tracts, proposed mitigation may be either generic or site-specific.

D.1. What mitigation measures other than those already proposed by the Bureau of Land Management might the Endangered Species Committee consider? Identify the extent to which each mitigation measure suggested reduces the impacts on the northern spotted owl.

D.2. Are there quarter townships that will attain 50–11–40 status during the period in which the FY 1991 sales would be harvested that could serve to replace dispersal habitat that would be harvested under the proposed actions? [50–11–40 is the standard established by the "Interagency Scientific Committee to Address the Conservation Of the Northern Spotted Owl" for the forested landscape outside Habitat Conservation Areas (HCA) necessary to facilitate dispersal of owls between HCAs. The numeric abbreviation means that 50 percent of the landscape within a quarter township is maintained in forest stands with an average diameter at breast height of 11 inches and minimum canopy of 40 percent.]

All parties should be prepared to discuss the issues raised by these questions at the prehearing conference and to address these issues, as appropriate, at the hearing.

Harvey C. Sweitzer,

Administrative Law Judge, Office of Hearings and Appeals, U.S. Department of the Interior.

[FR Doc. 91–27410 Filed 11–2–91; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF ENERGY

Upgrading Residuum and Heavy Crude Oils; Program Solicitation

AGENCY: U.S. Department of Energy.

ACTION: Notice of program solicitation.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.9 and in support of the Bartlesville Project Office, it intends to issue a Program Solicitation entitled "Upgrading Residuum and Heavy Crude Oils".

SCOPE: The Office of Fossil Energy in the Department of Energy and the Bartlesville Project Office are interested

in research applications from organizations capable of doing quality research related to the upgrading of heavy oils. The purpose of this overall effort is to improve the fundamental scientific and technical understanding of the chemical, physical, and biotechnological processes involved in the conversion and utilization of heavy crude oils or residuums obtained from light crude oil. To accomplish this purpose, organizations are encouraged to undertake heavy oil upgrading research or to continue ongoing work in this area. The oil processing industry and its associated process research industry are well suited to produce high payoff results in a timely fashion and should be involved. These organizations are aware of the limitations of the existing heavy oil upgrading technologies and know that significant increases in the yield of quality transportation fuels is possible from "the bottom of the barrel." DOE plans to issue Financial Assistance Cooperative Agreements as the award instruments for applications selected for support. All responsible sources may submit offers which will be considered.

AWARDS: Approximately $4.5 million DOE funding is planned for this solicitation which should provide support for approximately six proposal selections. Cost-sharing is encouraged for this effort. This Program Solicitation will be available on or about November 6, 1991. DOE PS No. DE–PS22–92BC14809. A copy of the Program Solicitation may be obtained by writing to the contact listed below. No telephone requests for the solicitation will be accepted.

FOR FURTHER INFORMATION WRITE TO: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940, Attn: David L. Hunter.

Dated: October 31, 1991.

Richard D. Rogus,

Contracting Officer, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91–27240 Filed 11–12–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TQ92–2–63–000]

Carnegie Natural Gas Co. Proposed Changes in FERC Gas Tariff

November 6, 1991.

Take notice that on October 31, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective December 1, 1991:

Twenty-Third Revised Sheet No. 8
Twenty-Third Revised Sheet No. 9

Carnegie states that pursuant to the PGA clause in its FERC Gas Tariff and § 154.308 of the Commission's regulations, it is proposing to adjust its sales rates effective December 1, 1991, as part of its scheduled Quarterly PGA filing. The revised rates reflect the following changes from Carnegie's last fully-supported Out-of-Cycle PGA filing in Docket No. TQ92–1–63–000: A $0.0390 per Dth increase in the demand rates under Rate Schedules LVWS and CDS; a $0.3995 per Dth increase in the commodity rates under Rate Schedules LVWS and CDS; a $0.4008 per Dth increase in the winter period rate under Rate Schedule LVIS; and a $0.0013 per Dth increase in the DCA component of its rates under Rate Schedules LVWS and CDS. The tariff sheets also reflect an increase of $0.3995 per Dth in the summer period rate under Rate Schedule LVIS, as compared to the rate established pursuant to Carnegie's recent filing in Docket No. RP91–151–004, as accepted for filing by the Commission by letter order issued on October 25, 1991.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 18 CFR 385.211. All such protests should be filed on or before November 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell;

Secretary.

[FR Doc. 91–27190 Filed 11–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–17–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 6, 1991.

Take notice that CNG Transmission Corporation (CNG), on October 30, 1991, filed revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, as listed on Exhibit A attached to the filing, to be effective December 1, 1991.

CNG states that the purpose of the filing is to implement a provision of the Commission-approved settlement in Docket Nos. RP88–211–000, *et al.* CNG states that the revisions enable CNG to participate in the Texas Gas Transmission Corporation (Texas Gas) Capacity Assignment Program, through CNG's authorized Rate Schedule UTAP. CNG avers that the revised Rate Schedule UTAP fulfills all conditions of participation in the Transportation Assignment Program of both Texas Gas and Texas Eastern Transmission Corporation, as well as all conditions of the Commission's order authorizing CNG Rate Schedule UTAP, in Docket Nos. RP88–211–000, *et al.* (55 FERC ¶ 61,189 (1991)).

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–27191 Filed 11–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–18–000]

El Paso Natural Gas Co.; Tariff Filing

November 6, 1991.

Take notice that on October 31, 1991, pursuant to part 154 of the Federal Energy Regulatory Commission's

("Commission") Regulations Under the Natural Gas Act and in accordance with sections 21 and 22, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso Natural Gas Company's ("El Paso") Second Revised Volume No. 1 and First Revised Volume No. 1–A FERC Gas Tariffs, respectively, El Paso tendered for filing and acceptance certain tariff sheets that serve to update the Monthly Direct Charge and Throughput Surcharge to reflect additional dollars to be amortized based upon additional buyout and buydown costs not included in any of El Paso's previous buyout and buydown cost recovery filings. Such tariff sheets also serve to provide for a true-up mechanism for the period associated with the additional costs in the filing.

El Paso states that it has proposed to amortize the direct bill portion (25%) of such additional amount included in its filing over a fifteen (15) month amortization period extending through February 28, 1993. This amortization period will permit the direct bill portion of such additional cost to be completely amortized during the same direct bill amortization period as applies to costs included in El Paso's prior filings in Docket Nos. RP90–81–000, RP91–26–000 and RP91–162–000. El Paso proposes that the Throughput Surcharge attributable to the recovery of the amount in the filing be amortized over a period commencing December 1, 1991 through March 31, 1996 which constitutes fifty-two (52) months.

El Paso further states that the adjustments proposed by the filing are for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge. The Throughput Surcharge has increased $0.0086 per dth, from $0.2217 per dth to $0.2303 per dth.

El Paso states that it has tendered certain tariff sheets which, when accepted by the Commission, will revise section 21, Take-or-Pay Buyout and Buydown Cost Recovery, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, Second Revised Volume No. 1, by modifying the "true-up" mechanism set forth at § 21.5(d). Such true-up mechanism was established pursuant to the Stipulation and Agreement at Docket No. RP88–44–000, *et al.* The tariff sheets tendered make clear that a true-up mechanism applies to all costs filed since the submission of Settlement on August 31, 1990, including the additional costs El Paso is filing to recover as well as any subsequent costs El Paso may file to recover through the end of the amortization period.

El Paso also states that it intends early in 1992 to file to extend until March 31, 1996 the amortization period applicable to previously filed costs included in the Throughput Surcharge.

By order issued November 21, 1988 at Docket No. RP88–184–001, the Commission stated that it will require El Paso, before the effective date of its GIC to identify the contracts in litigation and to submit an estimate of the maximum and minimum costs the pipeline expects to incur under the contracts in litigation. Accordingly, El Paso submitted concurrently, but under separate cover letter, the schedules reflecting such information for which El Paso has requested confidential treatment.

Pursuant to § 21.6 of El Paso's Volume No. 1 Tariff, El Paso is required to file with the Commission certain information supporting the buyout and/or buydown amounts paid. Accordingly, El Paso also submitted concurrently, but under separate cover letter, the schedules reflecting such information for which El Paso has requested confidential treatment.

El Paso respectfully requested that the Commission accept the tendered tariff sheets to become effective December 1, 1991.

El Paso states that copies of the filing were served upon all interstate pipeline system sales and transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 384.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–27192 Filed 11–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–433–002 and CP88–433–003; Docket Nos. RP89–48–011, RP89–48–013, CP89–1126–001, RP89–222–005, RP89–254–004, and CP88–133–002, Docket Nos. TA91–1–86–000 and CP91–2466–000]

El Paso Natural Gas Co., Transwestern Pipeline Co., Pacific Gas Transmission Corp.; Questions Arising From Technical Conference and of Time for Responsive Pleadings

November 1, 1991.

On September 17, 1991, the Commission convened a technical conference to examine concerns raised in the dockets listed above concerning Southern California Gas Company's (SoCal) Targeted Sales Program (TSP) and Pacific Gas and Electric Company's (PG&E) Customer-Identified Gas Program (CIG).

As a result of the discussion at the technical conference, Commission staff and the Commissioners have compiled a list of questions to which the relevant parties are requested to respond. The questions are set forth below.

All interested intervenors may make filings with the Secretary of the Commission in response to the matters discussed at the technical conference and to the questions contained below, within 30 days of the date this notice is issued. Answers may be filed within 15 days thereafter. Any person desiring party status must file a motion to intervene in accordance with the Commission's Rules of Practice and Procedure.[1]

To PG&E

Provide, in detail, a written description of PG&E's Customer-Identified Gas Service (CIG), together with copies of all forms and documents required to be executed to obtain such service (*e.g.*, Natural Gas Service Agreement and pertinent exhibits; Confidential Pricing Information Form, Best-Efforts Customer-Identified Gas Purchase and Sales Agreement).

2. Provide a copy of PG&E's Rate Schedule G–CIG, as well as any other filings with the Public Utilities Commission of the State of California (CPUC) which pertain to the CIG.

3. Describe in detail the nature of the individual supply arrangements between PG&E's noncore customers and all suppliers, both of service via the Malin delivery point (through PGT) or via the Topock delivery point (through El Paso).

4. Explain how and where title of all gas supplies under the CIG is passed

[1] 18 CFR 385.214 (1990).

from one party to the next, tracking the chain of title from the production points to the burnertip (both for service via Malin and via Topock delivery points). Also explain how this chain of title contrasts with the chain of title for all remaining gas supplies.

5. Explain, in detail, the operations of the "Confidential Billing Unit." Such explanation should include a description of the nature of the agreement of understanding between the noncore customer and the producer/supplier as to the price and volume of the gas delivered under the program. Include an explanation of the reason for the confidentiality, a statement of the costs of initiating this billing unit and who bears this cost.

6. Service under Rate Schedule G–CIG is stated to be limited to 450 MMcf/day at the California border. Of the 450 MMcf/day, 200 MMcf is available from the U.S. Southwest through El Paso's system and the remaining 250 MMcf is available from Canada through PGT's system. How was this allocation arrived at? Explain the bases for any preference given to Canadian gas over domestic gas. If the CPUC made this determination, what criteria were used, or on what basis was the assessment made?

7. At the September 17, 1991 technical conference, PG&E stated that its CIG serves customers from system supply. Shell stated that under the CPUC's rules, there is no obligation for PG&E to serve noncore customers from system supply. It was further stated that the CPUC's OIR Procurement Decision forced the LDCs to divorce noncore customers from system supply. In light of the above, is PG&E obligated to serve noncore customers from system supply, and if not, on what basis are CIG transactions construed as sales from system supply, and further, on what basis are the costs associated with CIG transactions included in the PGA?

8. Explain how PGT bills PG&E for gas received from PGT. Are all gas purchases reflected as a single entry on the invoice? Does PGT provide PG&E with any type of report or invoice that indicates what gas supplies are related to CIG service? If so, explain.

9. PG&E stated at the conference that it had no "revenue interest" in the buy/sell arrangements. Yet other parties mentioned a $.0266 per Mcf "brokerage fee." Please state categorically whether there is any additional charge in buy/sell arrangements, by PG&E or any of its affiliates, including A&S, over and above PGT's approved sales rate. If so, please state the amount.

To SoCal

10. At the September 17, 1991 technical conference, SoCal stated that its TSP works in one of several ways: (1) The noncore customer negotiates with the producer/supplier and purchases the gas, and SoCal buys the gas from the customer (who has a sale for resale certificate); (2) the producer/supplier, SoCal and the noncore customer enter into a three-way agreement; (3) SoCal buys the gas from a customer-identified producer/supplier at the WACOG, then SoCal sells the gas to the customer at the WACOG after delivery into California; the customer receives some "net-back" payment back from the producer/supplier based on a separate, confidential agreement between the producer/supplier and the customer.

Explain, in detail, the contractual and operational differences between the several forms of the TSP, as described above (as well as any other variations that might exist). Include in the explanation the following points:

a. The contractual obligations of the various parties to each other;
b. How the determination or choice is made as to which form of TSP a noncore customer is to utilize;
c. The advantages and disadvantages of each form of TSP to each of the parties;
d. As to each form of TSP, how and where title of the gas is passed from one party to the next, tracking the chain of title from the point of production to the burnertip.

11. Provide copies of forms and documents required to be executed by the various parties in order to obtain such service.

12. Provide a copy of SoCal's Rate Schedule G–TARG, as well as any other filings with the CPUC which pertain to the TSP.

To Ensearch Corporation

13. Describe in detail the structure of the buy/sell arrangements outside California used by cogeneration plants, to which Ensearch Corporation referred during the technical conference. Include a discussion of those parties selling, holding title, and serving as shipper.

To All Parties.

14. In documentation provided at the technical conference and which PGT/PG&E indicated are given to producers, it appears that PG&E bills its customers the specific prices negotiated between the customers and the Canadian producers. *To PG&E:* Is this price different than that which other customers pay? If so, explain the difference. *To All Parties:* Is this just, reasonable and non-discriminatory, and explain why or why not?

15. Compare and contrast the use of the TSP and CIG with SoCal's and PG&E's prior use of firm interstate capacity to actively procure competitively priced gas and to move their customers' transportation volumes, including any previously existing buy/sell programs.

16. What allowances are made, if any, for the noncore customer to secure alternative gas supplies in the event that PG&E or SoCal either fails to use its "best efforts", or is unable to secure the customer-identified gas despite its "best efforts?" Is "best efforts" defined anywhere, and if so, indicate where and provide a copy of the definition?

17. The TSP and CIG have been described as interim programs which are to terminate once capacity brokering is implemented in California. The Commission has vacated El Paso's and Transwestern's capacity brokering certificate authority, and announced in Docket No. RM91–11–000, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation under part 284 of the Commission Regulations, the possibility that existing capacity brokering programs might be replaced with another capacity allocation program, such as a capacity releasing program, in which unused capacity rights would be released back to the interstate pipeline to be reassigned based on an established queue. In light of the above, comments are invited which address the following subjects:

a. Assuming capacity brokering is not implemented in California, how should this affect the interim nature of the buy/sell programs (*e.g.*, should these "transitional" programs terminate, or should they become permanent);
b. Assuming capacity brokering is not implemented in California, what changes in the contractual relationships under the buy/sell programs might be anticipated;
c. In the event the Commission were to terminate the buy/sell transactions, what are the advantages and disadvantages of timing that action with the implementation of an alternative capacity allocation program. Should the Commission consider one of these actions in advance of the other, and if so, which is more urgent?

18. PGT recently accepted its part 284 blanket certificate, thereby becoming an open-access pipeline. Alberta Petroleum Marketing Commission stated that the

CIG was not open-access and was not pretending to be open-access. Will the Commission's open-access policies be frustrated by the TSP and CIG, and if so, explain how? If not, explain way not.

19. The Independent Petroleum Association of Canada stated its belief that if the CIG was terminated, then PG&E would still buy from PGT, but customers would not benefit from individual negotiation. Rather, the customers would have to pay the WACOG. Is this correct, and if so, how would terminating the CIG serve the public interest? If not, explain why.

20. Compare and contrast the buy/sell programs initiated pursuant to the OIR Procurement Decision to earlier "special marketing programs" under which pipelines and producers agreed to amend high-priced gas purchase contracts previously entered into between them in order to allow the producers to sell the committed gas elsewere (excluding "captive customers") at market prices and to credit the volumes of such sales against the pipelines' take-or-pay obligations. Discuss the application of *Maryland People's Counsel* v. *FERC*, 761 F.2d 768 (DC Cir. 1985) in which the U.S. Court of Appeals for the District of Columbia held that the Commission failed to provide a reasonable basis for excluding the captive customers from eligibility to purchase the market priced gas.

21. Compare and contrast the CIG and the Tiered Pricing Program.

22. Discuss the PGA implications of the buy/sell programs.

23. Discuss the impact of the buy/sell programs on the existing interruptible queue and any potential lack of access to gas supplies during the peak season.

24. Discuss whether there are any harsh consequences arising from the operation of the LDCs' gas imbalance tariff provisions in conjunction with the implementation of the buy/sell programs.

25. Compare and contrast the TSP and CIG with any "buy/sell" programs or arrangements existing in other states.

26. Describe any negative impact for the winter heating season resulting from terminating buy/sell arrangements now.

27. The CPUC has jurisdiction over the California LDCs' intrastate capacity. Under what legal theory does the CPUC regulate the allocation of the California LDCs' interstate capacity on PGT, El Paso, and Transwestern?

28. What relationship to buy/sell programs do Commission-issued sales for resale marketing certificates have? Is there any significance to these certificates being issued to end-users, electric utilities, or LDCs? Is there any significance to these certificates being issued to make sales for resale of natural gas purchased from a pipeline under a firm or interruptible sales rate?

29. Finally, all parties are encouraged to respond to those questions addressed to SoCal or PG&E to the extent that any parties have documents or information responsive to those questions.

Additional Questions From Commissioner Trabandt

30. If the Final Rule in Docket No. RM91–11–000 (the so-called Mega–NOPR) retains in some form capacity brokering as the general policy for capacity re-allocation, or as an option for re-allocation, what special conditions, if any, would be appropriate for interstate pipelines serving California in order to ensure that the federal policies with regard to non-discrimination are implemented fully by California utilities?

31. Based on the same assumption, would it be appropriate to require that the buy/sell programs of SoCal and PG&E be terminated by a time certain after the effectiveness of the final rule to allow the CPUC to adopt a new program, such as no later than six months after effectiveness? What arguments support any earlier termination? What arguments support not having a deadline at all?

32. If the CPUC has acted on the pending order on capacity brokering (now scheduled for November 6, 1991), please comment on the relationship, if any, between the CPUC order and the current buy-sell programs. Also, please comment on the relationship between the CPUC order and the capacity re-allocation provisions of the Mega-NOPR. For example, would the CPUC order support full implementation by California utilities of federal non-discrimination policies in a capacity brokering program? If so, why is that true? If not, what is the nature of the potential non-compliance and what action could this Commission take to remedy it? How does the CPUC order affect pro or con the Mega-NOPR provisions on capacity re-allocation? What should be the treatment by this Commission of the buy-sell programs, such as a date certain for termination, in the context of the decisions made in the CPUC order?

33. What will be the impact of the PGT sale by PG&E to TransCanada, assuming it proceeds as announced, on the PG&E buy/sell arrangements? How does PG&E propose to proceed with buy/sell arrangements in the event of TransCanada ownership of PGT? Will the sale arrangements require TransCanada to continue the buy/sell arrangements as now implemented by PG&E, PGT, and Alberta and Southern?

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–27193 Filed 11–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ92–2–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

November 6, 1991

Take notice that on October 31, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing Sixty-Eighth Sheet No. 4 and Twenty-Seventh Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective December 1, 1991.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and paragraph 17.2 of MRT's FERC Gas Tariff. MRT states that it is also adjusting the level of Account No. 858 expenses included in the average commodity cost of gas pursuant to the Transportation Cost Recovery Mechanism set forth in Article V of the Stipulation and Agreement in Docket No. RP89–248 approved by Commission order dated August 7, 1991. MRT states that the impact of the instant filing on its Rate Schedule CD–1 rates is a decrease of $.144 per MMBtu in the demand charge, and an increase of 4.69 cents per MMBtu in the commodity charge, from the rate levels established in MRT's last out-of-cycle PGA effective November 1, 1991 in Docket No. TQ92–1–25–00. The single part rate under Rate Schedule SGS–1 reflects an increase of 3.30 cents per MMBtu.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27194 Filed 11-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-16-000 and TM92-3-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

November 6, 1991.

Take notice that on November 1, 1991, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of January 1, 1992:

Item A: Seventeenth Revised Sheet No. 5
Item B: Fourth Revised Sheet No. 6

National states that the purpose of the revisions in Item B is to reflect the change of Gas Research Institute (GRI) charge from 1.42 cents per Dekatherm (Dt) to 1.47 cents per Dt in FT and IT Rate Schedule, in compliance with the Commission's October 1, 1991 order, Opinion No. 365, in Docket No. RP91-170-000 *et al.* National states that similar change is also made in RQ and GSS Rate Schedule in Item A.

National also states that the purpose of the revisions in Item A is to reflect an Annual Purchased Gas Adjustment (PGA), to comply with § 154.305 of the Commission's Regulations. National states it also reflects a quarterly PGA rate change pursuant to section 17 of the General Terms and Conditions of National's FERC Gas Tariff, Second Revised Volume No. 1.

National states that in compliance with the Commission's November 1, 1990 Settlement Order, in Docket Nos. RP86-136-000 *et al.*, Item A reflects the settlement base tariff rates filed on December 3, 1990. National states that the tariff sheet also reflects a commodity current adjustment of 23.68 cents per Dt from National's October quarterly PGA filed on August 30, 1991 in Docket Nos. TQ92-1-16-000 and TM92-1-16-000. National goes on to state that the revised RQ and CD sales commodity rate of 291.55 cents per Dt is based upon a current average cost of purchased gas of 276.19 cents per Dt (in unit of purchases), or 282.00 cents per Dt (in unit of sales).

National further states that copies of the filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27195 Filed 11-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 6, 1991.

Take notice that Northern Natural Gas Company (Northern), on October 31, 1991, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2 the following tariff sheets with a proposed effective date of November 1, 1991:

Third Revised Volume No. 1

One-Hundred First Revised Sheet No. 4B
Sixty-Ninth Revised Sheet No. 4B.1
Twentieth Revised Sheet No. 4H

Original Volume No. 2

One Hundred Eighth Revised Sheet No. 1C

Northern states that it is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. Northern notes that the instant filing reflects a Base Average Gas Purchase Cost of $2.1596 per MMBtu to be effective November 1 through December 31, 1991.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27196 Filed 11-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-19-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 6, 1991.

Take notice that on October 31, 1991, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on the filing with a proposed effective date of December 1, 1991.

Transwestern states that the tariff sheets are being filed by Transwestern to implement effective December 1, 1991 a number of tariff revisions relating to the open access transportation services it renders under its Rate Schedule FTS-1, ITS-1, and TP-1. The majority of the tariff revisions, Transwestern states, were approved by the Commission in the context of Stipulation and Agreement filed by Transwestern and other parties in Docket Nos. RP89-48-000, *et al.*

Transwestern states that copies of the filing were served upon all of Transwestern's gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27197 Filed 11-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF92-1-43-000 and RP91-152-004]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 6, 1991.

Take notice that Williams Natural Gas Company (WNG) on October 30, 1991, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets:

Effective Date November 1, 1991

Sixth Revised Third Revised Sheet No. 6
Sixth Revised Third Revised Sheet No. 6A
Sixth Revised Third Revised Sheet No. 9

Effective Date November 7, 1991

Second Substitute Fourth Revised Sheet No. 6
Second Substitute Fourth Revised Sheet No. 6A
Third Substitute Fourth Revised Sheet No. 9

WNG states that Sixth Revised Third Revised Sheet Nos. 6, 6A, and 9 are being filed pursuant to § 154.309 of the Commission's Regulations (Interim Adjustment Filings).

WNG states that Second Substitute Fourth Revised Sheet Nos. 6 and 6A and Third Substitute Fourth Revised Sheet No. 9 are being filed to reflect the Interim Adjustment in WNG's Docket No. RP91-152 rates to be effective November 7, 1991.

WNG states that copies of the filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27198 Filed 11-12-91; 8:45 am]

BILLING CODE 6717-01-M

Cases Filed During the Week of October 18 Through October 25, 1991

Office of Hearings and Appeals

During the Week of October 18 through October 25, 1991, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 6, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

REFUND APPLICATIONS RECEIVED

[Week of October 18 to October 25, 1991]

Date	Name of firm	Date received
10/18/91 thru 10/25/91.	Texaco Refund Applications Received.	RF321-17833 thru RF321-17856
10/18/91 thru 10/25/91.	Crude Oil Refund Applications Received.	RF272-90261 thru FR272-90307
10/18/91 thru 10/25/91.	Gulf Oil Refund Applications Received.	RF300-17929 thru RF300-17946
10/15/91	C. Frola & Son, Inc.	RF341-12
10/21/91	Minit Mart #1	RF326-315
10/21/91	Minit Mart #9	RF326-316
10/21/91	Minit Mart #10	RF326-317
10/21/91	Minit Mart #11	RF326-318
10/21/91	Minit Mart #12	RF326-319
10/21/91	Minit Mart #14	RF326-320
10/21/91	Minit Mart #15	RF326-321
10/21/91	Minit Mart #16	RF326-322
10/22/91	D. Richard Hassett	RF342-10
10/22/91	Posen Oil Terminal, Inc.	RF324-11

REFUND APPLICATIONS RECEIVED—Continued

[Week of October 18 to October 25, 1991]

Date	Name of firm	Date received
10/22/91	Buff's Arco	RF304-12523
10/22/91	Dahlke Oil Company	RF315-10175
10/22/91	Don Foster Oil Company	RF342-5
10/22/91	Lansing Ice & Fuel Company	RF342-6
10/22/91	Watkins Oil Company, Inc.	RF342-7
10/22/91	Tri-Par Oil Company, Inc.	RF342-8
10/22/91	Rollins Oil Company	RF342-9
10/23/91	Oak Park and Madison Service.	RF304-12521
10/23/91	John's Arco	RF304-12522
10/24/91	Denver F. Stockham	RF335-28

[FR Doc. 91-27241 Filed 11-12-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4029-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 13, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Identification, Listing, and Rulemaking Petitions (ICR No. 1189.04). This is a renewal amendment of an approved collection (OMB No. 2050-0053). This renewal includes the Treatability Study Sample Exemption (ICR No. 1443), previously approved under OMB No. 2050-0088.

Abstract: This ICR is a comprehensive presentation of the information requirements to submit rulemaking petitions, requests for solid waste and boiler variances, and requests for treatability study exemptions to EPA, as provided in subpart C of 40 CFR part 260 and § 261.4(e)–(f).

For rulemaking petitions, all petitions must submit certain basic information, including name and address, and interest in, description of, and need and justification for the proposed action. In addition, petitioners for equivalent testing or analytical methods must also demonstrate that the proposed method is equal to or superior to the specified method and provide additional information such as a description of proposed method and comparative results of proposed and specified methods. Petitioners seeking to delist a waste produced at a particular facility must demonstrate that the waste does not exhibit the characteristics for which it was listed or any additional factors which may cause the waste to be hazardous. Facilities requesting variances from classification as a solid waste for specified recycled materials must address the relevant criteria contained in § 260.31. EPA uses this information to substantiate that these materials actually are being recycled and are not being accumulated to evade hazardous waste regulation. Owners/operators of enclosed flame combustion devices requesting variances for classification as a boiler must demonstrate the compatibility of the proposed device with classification as a boiler and address the relevant criteria detailed in § 260.32 in their demonstrations.

Facility requirements for treatability study exemptions for samples of hazardous waste include initial notification, recordkeeping, reporting, and final disposition notification. Facilities generating and collecting treatability study samples may also petition to increase sample quantity limits in excess of the specified limits. EPA uses this information to track the treatability study sample wastes, to confirm the proper management of these wastes, and to ensure that only ligitimate treatability study activities are conducted.

Burden Statement: The public reporting burden for this collection is estimated to average 195 hours per response for the rulemaking petition, 43.3 hours per response for solid waste and boiler variance, and 8.2 hours per response for the treatability study samples. This estimate includes all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated annual recordkeeping burden for the treatability study sample is 2 hours per recordkeeper.

Respondents: Facilities generating hazardous and solid waste, generators and collectors of treatability study samples, and laboratories and other facilities conducting treatability studies.

Estimated Number of Respondents: 148.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8,450 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,
and
Jonathan Gledhill, Office of Mangement and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW. Washington, DC 20503.

Dated: November 6, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–27268 Filed 11–12–91; 8:45 am]
BILLING CODE 6560–50–M

[FRL–4029–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 13, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Underground Storage Tanks–Requirements for State Program Approval (ICR No. 1355.03). This is a renewal of an approved collection (OMB No. 2050–0067).

Abstract: Any State, Territory or Indian Tribe wishing to operate an underground storage tank (UST) program in lieu of the federal program must submit a one-time application to EPA for approval. The basic requirements for approved State programs are specified in section 9004 of the Hazardous and Solid Waste Amendments of 1984. In addition, approved States may have to submit a revised application under certain circumstances, for example, when a key State law or UST regulation is repealed or modified.

A State program application must contain the following information: (1) Transmittal memo signed by the Governor; (2) Attorney General's statement; (3) description of current program administration; (4) memorandum of Agreement between EPA and the State; and (5) copies of relevant State laws and regulations. EPA has developed standardized application packages and guidance for use by States. Development of an application is coordinated with EPA Regional Offices, and States may submit draft applications to EPA for review and comment prior to submittal of the official State application.

EPA reviews the State application to determine whether the State technical requirements are as stringent as the corresponding federal requirements and if the State program provides adequate enforcement for compliance with the requirements.

Burden Statement: The public reporting burden for this collection is estimated to average 272 hours per response; this estimate includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: States, Territories, and Indian Tribes.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1360 hours.

Frequency of Collection: One-time.

Send comments regarding the burden estimate, or any other aspect of this

collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460,
and
Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW, Washington, DC 20503.

Dated: November 6, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-27269 Filed 11-12-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4029-5]

Witco Corp., Marshall, TX; Petition for Exemption—Class I Hazardous Waste Injection

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision of petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Witco Corporation, for the Class I injection wells located at Marshall, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decisions allows the underground injection by Witco Corporation, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection well at the Marshall, Texas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 31, 1991. A public hearing was held July 1, 1991. The public comment period ended on July 15, 1991. Witco, which supported the proposal, was the only commenter. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of November 5 1991.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency Region 6, Water Management Division, Water Supply Branch (6W-SU); 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief, Municipal Facilities Branch, EPA-Region 6 telephone (214) 655-7110, (FTS) 255-7110.

Kenton Kirkpatrick,

Acting Director, Water Management Division (6W).

[FR Doc. 91-27267 Filed 11-12-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

[Notice 1991-20]

Schedule of Matching Fund Submission Dates and Certification Dates for 1992 Presidential Candidates

AGENCY: Federal Election Commission.

ACTION: Schedule of matching fund submission dates and certification dates for 1992 Presidential candidates.

SUMMARY: Pursuant to 11 CFR 9036.2(a) the Federal Election Commission is publishing matching fund submission/resubmission dates and certification dates for 1992 Presidential candidates who are eligible to receive Federal matching funds. Eligible candidates may present one submission and/or one resubmission per month on the designated date. Payments will be made by the U.S. Treasury to the candidate generally within 48 hours after certification by the Commission.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Lisi, Audit Division, 999 E Street, NW., Washington, DC 20463, telephone: (202) 219-3720; (800) 424-9530.

SUPPLEMENTARY INFORMATION: Presidential candidates eligible to receive Federal Matching Funds may present submission and/or resubmission to the Federal Election Commission once a month on designated submission dates. The Commission will review the submission/resubmissions and forward a certification for payment to the Secretary of the Treasury. Since no payments can be made during 1991, all submissions received during 1991 will be certified on December 27, 1991, for payment on January 2, 1992 (11 CFR 9036.2(c)). During 1992 and 1993 certifications and payments will be made on a monthly basis. The last date a candidate may make a submission is March 1, 1993. The submission dates and processing times specified in the following list pertain to non-threshold matching fund submissions and resubmissions after the candidate establishes eligibility. The threshold submission on which that eligibility will be determined may be filed at any time and will be processed within fifteen business days unless review of the threshold submission determines that eligibility has not been met.

Schedule of Matching Fund Submission Dates and Certification Dates for 1992 Presidential Candidates

Submission date	Certification to Treasury
10/01/91	12/27/91
11/01/91	12/27/91
12/02/91	12/27/91
01/02/92	01/31/92
02/03/92	02/28/92
03/02/92	03/31/92
04/01/92	04/29/92
05/01/92	05/29/92
06/01/92	06/30/92
07/01/92	07/31/92
08/03/92	08/31/92
09/01/92	09/30/92
10/01/92	10/30/91
11/02/92	11/30/92
12/01/92	12/31/92
01/04/93	01/29/93
02/01/93	02/26/93
03/01/93	03/31/93

Dated: November 5, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91-27255 Filed 11-12-91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-919-DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-919-DR), dated October 22, 1991, and related determinations.

DATED: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The incident period closing date for this disaster published in **Federal Register** Notice dated October 28, 1991,

was incorrect. The correct closing date for the incident period is October 29, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-27242 Filed 11-12-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-919-DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-919-DR), dated October 22, 1991, and related determinations.

DATED: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective October 28, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support; Federal Emergency Management Agency.

[FR Doc. 91-27243 Filed 11-12-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-920-DR]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA-920-DR), dated November 4, 1991, and related determinations.

DATES: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated November 4, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Public Law 100-707), as follows:.

I have determined that the damage in certain areas of the Commonwealth of Massachusetts, resulting from a major coastal storm on October 30, 1991, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard H. Strome of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Massachusetts to have been affected adversely by this declared major disaster:

Barnstable, Dukes, Essex, Nantucket, Plymouth, and Suffolk Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-27244 Filed 11-12-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; South Carolina State Ports Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200435-001.

Title: South Carolina State Ports Authority/BCSL-U.S. Med. Line, Ltd. Terminal Services Agreement.

Parties: South Carolina State Ports Authority (Authority) British Continental Shipping Line, Ltd.-U.S. Med Line, Ltd. (BCSL-U.S. Med. Line, Ltd.).

Synopsis: The amendment extends the term of the agreement two years through October 31, 1993.

Dated: November 6, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-27207 Filed 11-12-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

County Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. County Bancshares, Inc., Troy, Alabama; to establish Pike County Federal Savings Bank, Troy, Alabama ("Interim Bank") pursuant to section 4(c)(8) of the Bank Holding Company Act, to facilitate the acquisition of the Troy, Alabama branch office of First Federal Bank, F.S.B., Tuscaloosa, Alabama. Applicant also proposes to merge Interim Bank with and into its bank subsidiary, Pike County Bank, Troy, Alabama, pursuant to the Oakar Amendment of FIRREA.

Board of Governors of the Federal Reserve System, November 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-27208 Filed 11-12-91; 8:45 am]

BILLING CODE 6210-01-F

First Liberty Capital Corp. Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 29, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Keller Development Corporation, Effingham, Illinois; to retain 10.69 percent of the voting shares of South Central Illinois Bankcorp, Inc., Effingham, Illinois, and thereby indirectly acquire The First National Bank of Effingham, Effingham, Illinois.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Liberty Capital Corp. Employee Stock Ownership Plan, Hugo, Colorado; to acquire 21.86 percent of the voting shares of First Liberty Capital Corp., Hugo, Colorado, and thereby indirectly acquire The First National Bank of Hugo, Hugo, Colorado.

2. Westar Bank, N.A., Bartlesville, Oklahoma, and the First Bancshares, Inc., Employee Stock Ownership and Thrift Plans, Bartlesville, Oklahoma; to acquire 17.62 percent of the voting shares of First Bancshares, Inc., Bartlesville, Oklahoma, and thereby indirectly acquire Westar Bank, N.A., Bartlesville, Oklahoma, and Westar Bank, N.A., Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, November 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-27209 Filed 11-12-91; 8:45 am]

BILLING CODE 6210-01-F

Padgett Agency, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 1991.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Padgett Agency, Inc., Greenleaf, Kansas; to merge with Cloud County Bancshares, Inc., Concordia, Kansas, and thereby indirectly acquire Cloud County Bank and Trust Company, Concordia, Kansas.

In connection with this application, Applicant also proposes to expand the scope of its general insurance agency activity pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y to include a general insurance office at the location of Bank's Belleville, Kansas branch. The insurance office will serve an area within a 10 mile radius of Belleville, Kansas, an area with a population of less than 5,000.

Board of Governors of the Federal Reserve System, November 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-27210 Filed 11-12-91; 8:45 am]

BILLING CODE 6210-01-F

Stichting Administratiekantoor ABN AMRO Holding, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 27, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Stichting Administratiekantoor ABN AMRO Holding, Amsterdam, The Netherlands; Stichting Prioriteit ABN AMRO Holding, Amsterdam, The Netherlands; ABN AMRO Holding N.V., Amsterdam, The Netherlands; ABN AMRO Bank N.V., Amsterdam, The Netherlands; and ABN AMRO North America, Inc., Chicago, Illinois; to acquire The Talman Home Federal Savings and Loan Association of Illinois, Chicago, Illinois ("Thrift"), and thereby engage in operating a savings association pursuant to § 225.25(b)(9); the origination, sale, and servicing of residential mortgage loans through Talman Home Mortgage Corporation, Chicago, Illinois, a wholly owned subsidiary of Thrift, pursuant to § 225.25(b)(1); community development activities through the Thrift's 20.24 percent ownership interest in The Savings and Loan Network, Inc., Chicago, Illinois, purusant to § 225.25(b)(6); credit related insurance activities through Talman Insurance Services, Inc., Chicago, Illinois, a wholly owned subsidiary of Thrift, pursuant to § 225.25(b)(8); and providing securities brokerage services restricted to buying and selling securities through Talman Insurance Services, Inc., solely for the account of customers pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-27211 Filed 11-12-91; 8:45 am]

BILLING CODE 6210-01-F

Vogel Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 4, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Vogel Bancshares, Inc., Orange City, Iowa; to acquire 100 percent of the voting shares of Iowa State Bank, Hull, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arvest Bank Group, Inc., Bentonville, Arkansas and First Commercial Corporation, Little Rock, Arkansas; to each acquire 50 percent of the voting shares of TRH Bank Group, Inc., Norman, Oklahoma, for a total of 100 percent. TRH Bank Group, Inc., Norman, Oklahoma has applied to become a bank holding company by acquiring at least 80 percent of the voting shares of Security National Bank and Trust Company, Norman, Oklahoma.

Board of Governors of the Federal Reserve System, November 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-27212 Filed 11-12-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Hart-Scott-Rodino Antitrust Improvement Act; Notification and Report Form; Information Collection Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the paperwork reduction act.

SUMMARY: This publication provides notice that the Federal Trade Commission is seeking renewed approval for three years from OMB for the premerger report form that implements the notification requirement in section 7A of the Clayton Act, 15 U.S.C. 18a. The present OMB approval for the report form is scheduled to expire on January 31, 1992.

DATES: Comments on this clearance application must be submitted on or before December 13, 1991.

ADDRESSES: Send comments to Mr. Donald R. Arbuckle, FTC Desk Officer, Office of Information and Regulatory

Affairs, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503. Copies of the Request for OMB Review may be obtained from the Public Reference Branch, room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard B. Smith, Staff Attorney, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act provides that certain persons proposing to engage in acquisitions or mergers of a specified size shall file with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division a premerger notification report. The Federal Trade Commission, with the concurrence of the Assistant Attorney General, prescribes the form on which the report is made.

The premerger notification program has been in effect since September 5, 1978, when the implementing rules and the report form became final. Since that time, changes have been made in both the rules and the form to improve the effectiveness of the premerger notification program and to lessen the burden of complying with the notification requirements. The rules and the report form continue to be reviewed in order to improve the program's effectiveness and to reduce the paperwork burden on the business community.

Based upon fiscal year 1990 data, the Commission estimates that companies subject to the filing requirements of section 7A of the Clayton Act and the implementing rules expended approximately 160,000 hours to complete the reporting form or, in certain circumstances, to provide specified documents in lieu of the form. If the total number of reportable transactions decreases as compared to the previous year, as was true in fiscal year 1991 as compared to fiscal year 1990, the aggregate reporting burden likewise declines. For further information about the fiscal year 1990 estimate, refer to section 13 of the Supporting Statement.

Donald S. Clark,

Secretary.

[FR Doc. 91–27246 Filed 11–12–91; 8:45 am]

BILLING CODE 6750–01–M

[File No. 851 0057]

American Industrial Real Estate Association, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Los Angeles area multiple listing service ("MLS") specializing in industrial properties from conditioning broker membership in the MLS on being primarily engaged in industrial real-estate brokerage, or on the amount of industrial real-estate experience the brokers have, or on the dollar volume of their business. In addition, the agreement would also prohibit respondents from restricting any broker's offering or accepting any exclusive agency listing, or requiring disclosure of commissions that deviate from normal commission rates.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Paul Roark, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13209, Los Angeles, CA 90024. (213) 575–7890.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of American Industrial Real Estate Association ("A.I.R."), a corporation, and The Industrial Multiple, a corporation, and it now appearing that A.I.R. and The Industrial Multiple, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is Hereby Agreed By and between A.I.R. and The Industrial Multiple, by their duly authorized officers, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent A.I.R. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 345 Figueroa Street, suite M1, Los Angeles, CA 90071.

Proposed respondent The Industrial Multiple is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located a 345 Figueroa Street, suite M1, Los Angeles, CA 90071.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and sever its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently

withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

The following definitions shall apply to this order:

1. *Applicant* shall mean any broker who is duly licensed by the State of California as a real estate broker within the State of California and who has applied on behalf of his or her firm for membership in respondents' multiple listing service.

2. *Exclusive agency listing* shall mean any listing under which the property seller or lessor appoints a broker as exclusive agent for the sale or lease of the property at an agreed commission, but reserves the right to sell or lease the property personally to a direct purchaser or lessee (one not procured in any way through the efforts of any broker) with no commission owed.

3. *Industrial property* or *industrial real estate* shall mean land and/or buildings used for, or intended at the time of listing to be used for, such purposes as manufacturing, warehousing, distribution, research and development, data processing, and activities related to such industrial uses, rather than by businesses that deal primarily with the general public, and having a minimum area of 5,000 square feet.

4. *Listing agreement* or *listing* shall mean any agreement between a real estate broker and a property seller or lessor for the provision of real estate brokerage services.

5. *Member* shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by respondents.

6. *Multiple listing service* or "MLS" shall mean a clearinghouse through which member real estate brokerage firms exchange information on listings of real estate properties and share commissions with members who locate purchasers or lessees.

7. *Variable rate listing* shall mean any listing under which the property seller or lessor appoints a broker as exclusive agent for the sale or lease of the property, but where the broker agrees to accept a reduction in the total commission due where the property owner or lessor finds the purchaser or lessee.

I

It Is Ordered That each respondent, and their successors, assigns, directors, officers, committees, representatives, agents, or employees, directly, indirectly, or through any device, in or in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Adopting, maintaining, or enforcing any bylaw, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose, tendency, or effect of conditioning membership in The Industrial Multiple or use of respondents' MLS on:

1. An applicant: (a) Being primarily engaged in industrial real estate brokerage, (b) receiving a specified percentage of income from industrial real estate commissions, or (c) having a specified percentage of his or her real estate transactions involve industrial property;

2. An applicant having completed, listed, or otherwise been involved with any minimum number or minimum dollar volume of industrial real estate sales or leases over any period of time;

3. An applicant having been engaged in industrial real estate brokerage for any period of time; or

4. Any criterion that is applied in an unreasonably discriminatory manner.

Provided, However, That nothing contained in this order shall prohibit respondents from adopting or enforcing any non-discriminatory policy to assure that its members are, and hold themselves out to the public as being, actively engaged in and competent in industrial real estate brokerage and that listings published on respondents' multiple listing service are adequately serviced.

B. Restricting or interfering with:

1. Any broker's offering or accepting any exclusive agency listing or variable rate listing;

2. The publication on respondents' MLS of any exclusive agency listing in any way other than by requiring designation of the listing as one granting an exclusive agency or by imposing terms applicable to all listings accepted for publication by respondents' MLS; or

3. The publication on respondents' MLS of any variable rate listing in any way other than by requiring designation of the listing as one granting a variable rate or by imposing terms applicable to all listings accepted for publication by respondents' MLS.

Provided, However, That nothing contained in this order shall prohibit respondents from adopting or enforcing reasonable and non-discriminatory rules requiring that exclusive agency listing contracts, as a condition for publication through The Industrial Multiple, contain clauses providing that any dispute between the parties of the contract over who was the procuring cause of a buyer or lessee for the listed property shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. C. Adopting, maintaining, or enforcing any policy or taking any other action that has the purpose, tendency, or effect of:

1. Requiring any broker that charges a commission that deviates from that broker's normal commission schedule to disclose the specific deviation or the fact of a deviation to other brokers or either of the respondents; or

2. Requiring that members disclose to other members or the respondent any information regarding the commission rates or fees to be paid by sellers or lessors.

Provided, However, That nothing contained in this subpart shall prohibit respondents from publishing or otherwise distributing to or among members or respondents' MLS the rate

or amount of commission to be paid to a non-listing broker for a particular transaction.

II

It is Further Ordered That respondents shall:

A. Within thirty (3) days after this order becomes final, furnish a copy of this order to each of their members, and to each applicant who has been denied membership in respondents' MLS since January 1, 1984.

B. Within sixty (60) days after this order becomes final, amend their by-laws, rules and regulations, and all other of their materials to conform to the provisions of this order, and provide each member with a copy of the amended by-laws, rules and regulations, and other amended materials.

C. For a period of three (3) years after this order becomes final, furnish a copy of this order to each new member of A.I.R., to each new member of The Industrial Multiple, and to any person who inquires about, or who submits an application for, membership in A.I.R. or its MLS.

D. Within sixty (60) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which respondents have compiled and are complying with this order.

E. For a period of five (5) years after this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which respondents have complied with and are complying with this order.

F. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in either respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in either corporation that may affect compliance obligations arising out of this order.

Anaylsis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the American Industrial Real Estate Association ("A.I.R.") and the Industrial Multiple ("Multiple").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint in this matter alleges that A.I.R., through its wholly owned subsidiary The Industrial Multiple, operates the sole multiple listing service ("MLS") that distributes significant numbers of industrial property listings throughout the greater Los Angeles area. It is the sole MLS that specializes in industrial real estate in the Los Angeles area and the sole MLS to which the vast majority of major industrial brokerage firms in the area belong. Membership in the Multiple provides valuable competitive advantages in the brokering of industrial properties in the Los Angeles area.

In adopting the rules, by-laws, and policies, and in engaging in the practices described in the complaint, A.I.R. and the Multiple allegedly acted as a combination of their members to restrain trade in the provision of industrial real estate brokerage services. The by-laws of A.I.R. indirectly apply to the members of the Multiple in that membership in A.I.R. is a prerequisite to membership in the MLS.

Proposed respondents' rules, by-laws, policies, and practices have, according to the proposed complaint, unreasonably restricted membership in the Multiple in the following respects:

—First, proposed respondents have excluded from membership licensed brokers, otherwise qualified, who were not "primarily" engaged in industrial real estate.

—Second, they have required applicants to have been involved in a minimum number of industrial property transactions, as established from time to time by the Board of Directors, in the two years prior to application to qualify for membership in the Multiple. From November 1984 through December 1986, a minimum of sixteen transactions were required.

—Third, proposed respondents have required applicants to have been involved in a minimum dollar volume of industrial property transactions, as established from time to time by the Board of Directors, in the two years prior to application to qualify for membership in the Multiple. From November 1984 through December 1986, the minimum dollar volume required was $4 million.

—Fourth, they have required applicants to have four years experience selling industrial real estate to qualify for membership.

—Fifth, they have applied their rules and regulations in an unreasonably discriminatory fashion to deny access to the Multiple to qualified brokers.

Proposed respondents have also, the proposed complaint alleges, prohibited their members from accepting exclusive agency listing contracts for any industrial property of 5,000 square feet or more within the MLS's service area, and have refused to publish any exclusive agency listings through the Multiple, thus restricting the MLS to exclusive right to sell or lease listings. Exclusive agency listings are those under which the property seller or lessor appoints a broker as exclusive agent, but reserves the right to sell or lease the property personally to a purchaser or lessee that a broker did not find, with no commission owed.

The complaint also alleges that proposed respondents have required that a listing broker disclose the total commission to which he or she has agreed, not just the commission that the listing broker is offering to cooperating brokers for procuring a buyer or lessee. The Multiple's rules require that a member publicize to all other members any departure from the member firm's standard fee schedule.

The complaint alleges that the acts and practices described above restrain trade, and constitute unfair methods of competition and unfair acts or practices in or affecting commerce in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The proposed order requires, among other things, that the proposed respondents cease and desist from:

A. Conditioning membership in the Multiple on:

1. an applicant being primarily engaged in an industrial real estate brokerage;

2. an applicant having completed, listed, or otherwise been involved with any minimum number or minimum dollar volume of industrial real estate sales or leases over any period of time;

3. an applicant having been engaged in industrial real estate brokerage for any period of time; or

4. any criterion that is applied in an unreasonably discriminatory manner.

B. Restricting or interfering with any broker's offering or accepting any exclusive agency listing contract or the publication on the Multiple of any such listing in any way other than by requiring designation of the listing as one granting an exclusive agency. However, the Multiple can require, as a condition of publication, clauses in exclusive agency contracts providing that the parties to the listing agree to

arbitrate procuring cause disputes in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

C. Adopting or enforcing any policy that has the effect of requiring brokers to disclose to other brokers commissions that deviate from the brokers' normal commissions, or disclose any information regarding the commission rates or fees to be paid by sellers or lessors. However, proposed respondents may publish the rate of commission to be paid to a non-listing broker for a particular transaction.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-27250 Filed 11-12-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 882 3156]

Nu-Day Enterprises, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Washington corporation, its owner, and an officer from making false and unsubstantiated claims concerning their diet program, and from misrepresenting the nature of any program length television commercial ("infomercial") they produce; and would require a disclosure message that the infomercial is a paid advertisement within the first 30 seconds of any infomercial that is 15 minutes long or longer, and in addition, every time ordering information is presented.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Timothy Hughes, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353-4431.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of Nu-Day Enterprises, Inc., a corporation, HealthComm, Inc., a corporation, and Jeffrey S. Bland, individually and as an officer of Nu-Day Enterprises, Inc., and HealthComm, Inc.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nu-Day Enterprises, Inc., and HealthComm, Inc., corporations, and Jeffrey S. Bland, individually and as an officer of Nu-Day Enterprises, Inc., and HealthComm, Inc., and it now appearing that Nu-Day Enterprises, Inc., and HealthComm, Inc., corporations, and Jeffrey S. Bland, individually and as an officer of Nu-Day Enterprises, Inc., and HealthComm, Inc., corporations, hereinafter sometimes referred to as proposed Respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Nu-Day Enterprises, Inc., and HealthComm, Inc., by their duly authorized officer, Jeffrey S. Bland, individually and as an officer of Nu-Day Enterprises, Inc., and HealthComm, Inc., and their attorney, and counsel for the Federal Trade Commission that:

1. Nu-Day Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 5800 Soundview Dr., NW., in the City of Gig Harbor, State of Washington 98335.

HealthComm, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 5800 Soundview Dr., NW., in the City of Gig Harbor, State of Washington 98335. It owns and controls Nu-Day Enterprises, Inc.

Jeffrey S. Bland is an officer and director of Nu-Day Enterprises, Inc., and HealthComm, Inc. He formulates, directs and controls the acts and practices of these corporations. At all times material to the draft of the complaint attached hereto, he formulated, directed and controlled the acts and practices of Nu-Day Enterprises, Inc., and HealthComm, Inc. His address is the same as that of Nu-Day Enterprises, Inc., and HealthComm, Inc.

2. Proposed Respondents admit all the jurisdictional facts set forth in the draft of the complaint here attached.

3. Proposed Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed Respondents that the law has been violated as alleged in the draft of the complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed Respondents: (1) Issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and, (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered,

modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed Respondents' addresses as stated in this agreement shall constitute service. Proposed Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed Respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. On or before the sixtieth day following the date this consent agreement is accepted by the Commission and placed on the public record, Respondents agree to deliver a cashier's check or certified check for thirty thousand dollars ($30,000), made payable to the Federal Trade Commission, 55 East Monroe Street, suite 1437, Chicago, Illinois 60603.

Order

I

It is ordered, That Respondents Nu-Day Enterprises, Inc., a corporation, its successors and assigns, and its officers, HealthComm, Inc., a corporation, its successors and assigns, and its officers, and Jeffrey S. Bland, individually and as an officer of Nu-Day Enterprises, Inc., and HealthComm, Inc., and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing of the dietary program or food product(s) known as the "Nu-Day Program," "Nu-Day Meal Replacement Formula," "Nu-Day Herbulk," or any other substantially similar dietary program or food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

A. That any such program and/or product alters human metabolism so that the body will burn more calories than the body was burning prior to following the program or eating the product;

B. That any such program and/or product alters human metabolism so that weight lost while following the program or eating the product will not return when caloric intake increases; or

C. That any such program and/or product alters the mitochondria in the body's cells so that those cells convert more food into energy.

For purposes of this part I a "substantially similar dietary program or food product" shall mean any program or product that involves reduction of caloric intake to between eight hundred and one thousand two-hundred (1,200) calories and the consumption of food supplements consisting of powdered protein and bulking agents or containing chromium or any chromium-niacin complex.

II

It is further ordered, That Respondents Nu-Day Enterprises, Inc., a corporation, its successors and assigns, and its officers, HealthComm, Inc., a corporation, its successors and assigns, and its officers, and Jeffrey S. Bland, individually and as an officer of Nu-Day Enterprises, Inc., and HealthComm, Inc., and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing of any dietary program or food product in or affecting commerce, as "commerce" and "food" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such program or product:

A. Can or will alter human metabolism so that the body will burn more calories than the body was burning prior to following the program or eating the product;

B. Can or will alter human metabolism so that weight lost during a period of caloric restriction will not return when caloric intake increases; or

C. Can or will alter the mitochondria in the body's cells so that the cells convert more food into energy;

D. Can or will prevent the body's metabolism from slowing down to the level that it would reach on any other diet involving similar caloric intake;

unless, at the time of making such representation, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable scientific evidence" shall mean for purposes of this Order such test, analysis, research, study, survey or other evidence conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in that profession or science to yield accurate and reliable results.

III

It is further ordered, That Respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising any food or weight control service or product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product or service can or will help any consumers lose weight or maintain weight loss unless at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable scientific evidence" shall mean for purposes of this Order such test, analysis, research, study, survey or other evidence conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in that profession or science to yield accurate and reliable results.

IV

It is further ordered, That Respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary division or other device, in connection with manufacturing, labeling, packaging, offering for sale any food, drug or device as defined in section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, selling, distributing or advertising any such product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of such food, drug or device unless, at the time of making such representation, Respondents possess and rely upon a reasonable basis consisting of

competent and reliable scientific evidence that substantiates the representation. "Competent and reliable scientific evidence" shall mean for purposes of this Order such test, analysis, research, study, survey or other evidence conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in that profession or science to yield accurate and reliable results.

V

It is further ordered, That Respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising any dietary program or food product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, survey or any other scientific opinion or data.

VI

It is further ordered, That Respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising any service or product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, broadcasting, or disseminating, or assisting or encouraging others to create, produce, sell, broadcast, or disseminate:

A. Any commercial or other advertisement for any such product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisement;

B. Any commercial or other advertisement for any such product or service that is fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

Provided that, for purposes of this provision, the oral or visual presentations of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

VII

It is further ordered, that, on the date this Order becomes final, Respondents shall pay thirty thousand dollars ($30,000) to the Federal Trade Commisssion. Respondents shall make this payment by cashier's check or certified check made payable to the Federal Trade Commisssion. If the Commission determines that redress is wholly or partially impracticable or is otherwise unwarranted, any such funds shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to counter the manner of distribution chosen by the Commission.

VIII

It is further ordered, that Respondents Nu-Day Enterprises, Inc., and HealthComm, Inc., shall for five (5) years following service of this Order, notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order, or of any change in the positions or responsibilities of Dr. Jeffrey S. Bland in regard to any corporation or subsidiary of which he is an officer.

IX

It is further ordered, that Respondent Dr. Jeffrey S. Bland shall promptly notify the Commission of his discontinuance of his present business or employment and of his affiliation with a new business or employment engaged in the manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising of any foods, dietary programs, or publications relating thereto, or the offering for sale, selling, distributing or advertising of any services relating to any foods or dietary programs, and, for a period of five (5) years from the date of service of this Order, shall promptly notify the Commission of each affiliation with such new business or employment. Each such notice shall include his new business address and a statement of the nature of the business or employment in which he is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

X

It is further ordered, that, for at least four (4) years after the date of service of this Order Respondents, their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying at a place designated by the Commission,

A. All advertisements and promotional materials subject to this Order;

B. All materials relied upon as substantiation for any representation subject to this Order;

C. All test reports, studies, surveys, or other materials in Respondents' possession or control at any time that contradict, qualify, or call into question any representation subject to this Order or that contradict, qualify, or call into question the basis upon which Respondents relied for any such representation; and

D. All other materials and records that relate to Respondents' compliance with this Order.

XI

It is further ordered, that Respondents shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Nu-Day Enterprises, Inc., a Washington corporation, its parent, HealthComm, Inc., and Jeffrey Bland, Ph.D., the president of Nu-Day Enterprises, Inc., and HealthComm, Inc. (the "respondents"). Under this agreement, the respondents will cease and desist from making certain claims for products unless they possess reliable and competent scientific evidence that substantiates such claims and from claiming that paid advertisements are independent programs.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by

interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the proposed order contained in the agreement.

This matter concerns one-half hour long T.V. advertisements for a diet program and diet food products. The Complaint accompanying the proposed consent order alleges that, in connection with promoting diet programs and diet food products, the respondents engaged in deceptive acts and practices in violation of section 5 of the Federal Trade Commission Act and that the respondents disseminated false advertisements in violation of section 12 of the Federal Trade Commission Act. According to the Complaint, the respondents represented that this program and the food products would alter a person's metabolism so that he/she would burn more calories than he was burning prior to following the program or eating the food products.

The Complaint also alleges that the advertisements were deceptive because the respondents represented to consumers that they possessed 100,000 clinical trials conducted in a scientifically or medically acceptable manner to substantiate their claims that the program and food products would increase a person's metabolism when, in fact, they did not.

In addition the Complaint alleges that the one-half hour long advertisements deceptively represented themselves to be independent programs.

The consent order contains provisions designed to prevent the respondents from engaging in similar allegedly illegal acts and practices in the future.

Specifically, part I of the order prohibits the respondents from representing that the Nu-Day Program, Nu-Day Meal Replacement Formula, Nu-Day Herbulk or any similar diet program or food product will:

1. Alter human metabolism so that the body will burn more calories than it was burning prior to following the program or eating the food product;

2. Alter human metabolism so that weight lost while following the dietary program or eating the food product will not return when caloric intake increases; or

3. Alter the mitochondria in the body's cells so that those cells convert more food into energy.

Part II of the order prohibits the respondents from making the same representations prohibited in part I for any diet program or food product unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part III of the order prohibits any representation regarding a product's or service's ability to help with losing weight or maintaining weight loss unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part IV of the order prohibits any representation regarding the performance, benefits, efficacy or safety of any food, drug or device unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part V of the order prohibits respondents from misrepresenting the content or conclusions of scientific tests or other data.

Part VI of the order prohibits the respondents from representing that a paid advertisement is an independent program and requires periodic disclosures that the program is a paid advertisement.

Part VII requires respondents to pay $30,000 in redress. If the Commission determines that redress is impracticable or unwarranted, then the funds will be paid to the U.S. Treasury.

Parts VIII through X of the order require the corporate respondents and the individual respondent to give prior notification to the Federal Trade Commission of any changes or sale of the corporate respondent. The individual respondent must also notify the Commission in the event he changes positions or responsibilities in any business that is involved in diet programs or food products.

Finally, part XI requires the respondents to file a compliance report setting forth the manner and form in which they have complied with this order.

Donald S. Clark,

Secretary.

[FR Doc. 91-27248 Filed 11-12-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3347]

PepsiCo, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a soft drink concentrate manufacturer and bottler to divest, within a nine-month period, the soft drink business of the Twin Ports Bottling Company, which respondent acquired from MEI Corporation in 1986. Respondent is also required, for a period of ten years, to seek prior Commission approval before acquiring any soft drink distribution rights to non-Pepsi brands, in the Duluth, Minnesota area.

DATES: Compliant and Order issued October 15, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Constance Salemi FTC/S-3302, Washington, DC 20580. (202) 326-2643.

SUPPLEMENTARY INFORMATION: On Tuesday, November 6, 1990, there was published in the **Federal Register**, 55 FR 46272, a proposed consent agreement with analysis In the Matter of PepsiCo, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Donald S. Clark,

Secretary.

[FR Doc. 91-27247 Filed 11-12-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 912-3002]

Pompeian, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Maryland manufacturer of Pompeian Olive Oil from representing that eating olive oil lowers cholesterol more than eating vegetable oil, and is more heart healthy than eating vegetable oil, unless the respondent has a reasonable basis consisting of competent and reliable scientific evidence that substantiates such representations.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4104, Washington, DC 20580. (202) 326–3153. Nancy S. Warder, FTC/S–4112, Washington, DC 20580. (202) 326–3048.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Pompeian, Inc., a corporation ("Pompeian" or "proposed respondent") and it now appearing that proposed respondent is willing to enter into an agreement to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed by and between Pompeian, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Pompeian is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its offices and principal place of business located at 4201 Pulaski Highway, City of Baltimore, State of Maryland.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, that respondent Pompeian, Inc., a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any food in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Eating vegetable oil does not lower cholesterol;

B. Eating olive oil lowers cholesterol more than eating vegetable oil;

C. Eating olive oil is more heart healthy than vegetable oil;

D. Any edible oil has the relative or absolute ability to cause or contribute to any health attribute or benefit; or

E. Any edible oil has a favorable or unfavorable impact on any physiologic function or risk factor for a disease, or provides any other health benefit;

unless at the time of making such representation respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; provided, however, that any such representation that is specifically permitted in labeling for any such food product by the Food And Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to have a reasonable basis as required by this paragraph. For any test, analysis, research, study, or other evidence to be "competent and reliable" for purposes of this Order, such test, analysis, research, study, or other evidence must be conducted and

evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

II

It is further ordered, that respondent Pompeian, Inc., its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All test reports, studies, surveys, or other material in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

III

It is further ordered, that respondent Pompeian, Inc., shall distribute a copy of this Order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertising or other material covered by this Order and shall secure from each such person a signed statement acknowledging receipt of this Order.

IV

It is further ordered, that respondent Pompeian, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change such as the dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

V

It is further ordered, that respondent Pompeian, Inc., shall, within sixty (60) days after service upon it of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the requirements of this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order from Pompeian, Inc. (Pompeian).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during the comment period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertisements for Pompeian Olive Oil that discuss the health benefits of eating olive oil. The Commission's proposed complaint challenges three claims that were made in Pompeian's advertisements: (1) That eating vegetable oil does not lower cholesterol; (2) that eating olive oil lowers cholesterol more than vegetable oil; and (3) that olive oil is healthier for the heart than vegetable oil. According to the complaint, Pompeian falsely represented that these claims were supported by a reasonable basis. The use of the term "vegetable oil" in the complaint mirrors the wording used in the advertisements for Pompeian Olive Oil. In reality, "vegetable oil" is not a homogeneous commodity. Different vegetable oils contain monounsaturated fat, polyunsaturated fat, saturated fat, and other components in varying amounts. The complaint simply alleges that the firm did not have substantiation for its claims about vegetable oil in general and about vegetable oil in comparison to olive oil. Nor should the complaint be read to suggest that eating vegetable oil will, by itself, lower cholesterol.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar practices in the future. The proposed order prevents Pompeian from making the following five claims in any advertising for any food, unless the claim is substantiated by competent and reliable scientific evidence: (1) That eating vegetable oil does not lower cholesterol; (2) that eating olive oil lowers cholesterol more than eating vegetable oil; (3) that eating olive oil is more heart healthy than vegetable oil; (4) that any edible oil has the relative or absolute ability to cause or contribute to any health attribute or benefit; and (5) that any edible oil has a favorable impact on any physiologic function or risk factor for disease, or provides any other health benefit. The proposed order also provides that claims that are specifically permitted in labeling by the Food and Drug Administration under the Nutrition Labeling and Education Act of 1990 will be deemed to have a reasonable basis under the order.

Under the proposed order, Pompeian must distribute copies of the order to its operating divisions that are involved in the preparation and placement of advertisements, notify the Commission thirty (30) days in advance of any change in the corporation that may affect compliance obligations arising out of the order, and file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

[FR Doc. 91-27249 Filed 11-12-91; 8:45 am]
BILLING CODE 6759-01-M

[Docket No. 9241]

Tower Loan of Mississippi, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the respondent to: Offer its customers an opportunity to cancel the credit insurance written on their loans and to obtain cash refunds or credits to their accounts; accurately disclose the annual percentage rate, finance charge, and amount financed in accordance with the Truth in Lending Act; and provide future customers with a separate disclosure that sets out the costs of the loan with and without credit insurance and that emphasizes that the purchase of credit insurance is not required as a condition to obtaining a loan.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Sandra Wilmore or Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3169 or 326-3222.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent

order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having issued its complaint against Tower Loan of Mississippi, Inc., a corporation, and it appearing that Tower Loan of Mississippi, Inc., hereinafter sometimes referred to as respondent or Tower, is willing to enter into an agreement containing a cease and desist order,

It Is Hereby Agreed By and between respondent, its attorneys, and counsel for the Federal Trade Commission that:

1. Respondent Tower Loan of Mississippi, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Mississippi, with its office and principal place of business located at 131 Channel 16 Way, Jackson, Mississippi 39212.

2. Respondent admits all the jurisdictional facts set forth in the complaint here attached.

3. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) Any right to seek judicial review or otherwise to settle or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim it may have under the Equal Access to Justice Act, 5 U.S.C. 504 *et seq.*

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate in disposition of the proceeding, and respondent shall retain all rights and defense in this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by any means of the decision containing the agreed-to-order to respondent or its counsel shall constitute service. Respondent waives any right it may have to any particular manner of service. No agreement, understanding, representation, or interpretation not contained in the order may be used to vary or contradict the terms of the order.

7. Respondent has read the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It Is Ordered That respondent Tower Loan of Mississippi, Inc., its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with any closed-end credit transaction originated by respondent, do forthwith cease and desist from:

A. Failing to include in the finance charge and the annual percentage rate disclosed to the consumer, as required by sections 106, 107, and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606, and 1638, and §§ 226.4(d), 226.22, and 226.18 (d) and (e) of Regulation Z, 12 CFR 226.4(d), 226.22, and 226.18 (d) and (e), the premiums for credit life or accident and health insurance (hereinafter referred to as "credit-related insurance premiums") that consumers are required to purchase;

B. Failing to exclude from the amount financed disclosed to the consumer, as required by section 128 of the Truth in Lending Act, 15 U.S.C. 1638 and § 226.18(b) of Regulation Z, 12 CFR 226.18(b), the premiums for credit life or accident and health insurance that consumers are required to purchase; an

C. Failing to make all disclosures, determined in accordance with sections 106 and 107 of the Truth in Lending Act, 15 U.S.C. 1605 and 1606, and § 226.4 and 226.22 of Regulation Z, 12 CFR 226.4 and 226.22, in the manner, form, and amount required by §§ 226.17, 226.18, 226.19, and 226.20 of Regulation Z, 12 CFR 226.17, 226.18, 226.19, and 226.20.

II

Refund Program

It Is Further Ordered That, no later than thirty (30) days folloing the date of service of this order, respondent shall provide Baird, Kurtz & Dobson, 400 W. Capitol Street, suite 2500, Little Rock, AR 72203–3667, ("independent agent") with an itemized list containing the name and address of all consumers, and the name and address of the persons insured, if different, who have an account with respondent opened during the two-year period immediately preceding service of this order as to which payments are still owed on such date of service, on which credit-related insurance was written through respondent, excluding any consumer who has received a credit life or accident and health benefit from a policy written through respondent ("List 1"). Those consumers whose account is two or more payments delinquent at the time of service of this order shall be listed separately ("List 2"). No later than five (5) days thereafter, the independent agent shall send the letter contained in appendix A ("refund letter") to each consumer on List 1 and the letter contained in appendix B to each consumer on List 2 by first class mail. If any refund letter is returned as undeliverable, respondent shall make every reasonable effort to contact the consumer, including sending additional refund letters to the consumer's place of business, relatives, or any other location at which the consumer may be contacted based on information available to respondent.

For each such consumer on List 1 who, within sixty (60) days of the date of the postmark on the envelope containing appendix A, returns that refund letter to the independent agent with the indication that the consumer does not desire to retain credit-related insurance, Tower shall within thirty (30) days after notice of the consumer's election to cancel credit-related insurance: (1) Adjust the consumer's account by refunding in one lump-sum payment the dollar amount of all credit-related insurance premiums and the related

finance charges paid by the consumer to Tower prior to the date of the adjustment; and (2) adjust the consumer's account by reducing the consumer's remaining monthly payments by the dollar amount of all credit-related insurance premiums and the finance charges calculated thereon.

For each such consumer on List 2 who, within sixty (60) days of the date of receipt of appendix B, returns that refund letter to the independent agent with the indication that the consumer does not desire to retain credit-related insurance, Tower shall within thirty (30) days after notice of the consumer's election to cancel credit-related insurance: (1) Adjust the consumer's account by crediting the dollar amount of all credit-related insurance premiums and the related finance charges paid by the consumer to Tower prior to the date of the adjustment; and (2) adjust the consumer's account by reducing the consumer's remaining monthly payments by the dollar amount of all credit-related insurance premiums and the finance charges calculated thereon. If the amount of any such credit shall exceed the amount of the delinquency, respondent shall refund to the consumer the amount that exceeds the delinquency.

On any transaction with two or more borrowers, the refund letter must be directed to all borrowers and signed by all borrowers before the credit-related insurance shall be cancelled. If the refund letter is returned with only one signature, the independent agent shall use appendix E to return the refund letter to the borrower who has not signed.

If the borrowers reside at different addresses, the independent agent shall mail a copy of the refund letter to each address. A copy of the refund letter shall also be mailed to the co-signer on the transaction, if any, with the word "COPY" stamped in red on the letter.

For each such consumer excluded from either List 1 or List 2 because of receipt of a credit life or accident and health benefit, respondent shall provide the Associate Director for Credit Practices of the Federal Trade Commission with the consumer's name and address and a complete copy of the benefit check(s) (front and back) paid to each.

Tower shall bear all costs for the administration of the refund program.

III

It Is Further Ordered That during the sixty (60) day period during which consumers are given the opportunity to cancel credit-related insurance, respondent and staff of the Federal Trade Commission shall not otherwise communicate directly with the consumers listed on Lists 1 and 2, orally or in writing, concerning the refund program, except to refer such consumers to the independent agent, which shall limit its conversations with such consumers to the text of a prepared statement that shall not deviate in substance from that attached hereto as appendix C.

IV

It Is Further Ordered That respondent shall, in connection with any closed-end credit transaction originated by respondent, cease and desist from requiring any consumer to sign or initial a statement that credit-related insurance has been voluntarily chosen if the consumer's purchase of such insurance was required.

V

It Is Further Ordered That respondent shall, in connection with any closed-end credit transaction originated by respondent following the date of service of the order, cease and desist from failing to provide to each consumer before consummation of the transaction, a written statement containing the proposed monthly payment without credit-related insurance premiums and the proposed monthly payment with credit-related insurance premiums in accordance with the form attached hereto as appendix D. This statement shall be signed by the consumer in duplicate with a copy given to the consumer and a copy retained in the consumer's loan file.

VI

It Is Further Ordered That respondent shall maintain for at least three (3) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all records and documents necessary to demonstrate fully its compliance with this order.

VII

It Is Further Ordered That respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

VIII

It Is Further Ordered That respondent, for a period of six (6) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

It Is Further Ordered That respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Appendix A

Dear (Consumer):

When you got your loan from us, you bought credit life [and accident and health] insurance. Credit life insurance benefits are paid to you (or insured), less the balance of your loan, in the event of your [or insured's] death. Credit accident and health insurance benefits make your loan payments in the event you (or insured) become[s] totally disabled and are out of work for more than two weeks. The cost of this insurance was included in your monthly payment and this insurance coverage continues to be in force.

In settlement of an action brought by the Federal Trade Commission, Tower Loan has agreed to give you an opportunity to cancel your (or insured's) credit life [and accident and health] insurance.

If you did not want credit life [and accident and health] insurance when you got your loan, we will be happy to refund to you the amount of the insurance premiums you have paid plus the finance charges on the premiums, and cancel all future insurance payments. The following chart explains how this decision will affect your loan.

Your refund if you cancel insurance $_____

Your present monthly payment with insurance $_____

Your new monthly payment without insurance $_____

If you cancel the insurance, you [or insured] will not have any insurance to pay off the loan in case of death or to make your monthly payments in case of total disability. Therefore, if you wish to keep your credit insurance coverage, you do not need to do anything in response to this letter and your insurance coverage will continue as before

If you want to cancel the insurance, please date and sign this letter and return it in the postage paid envelope provided. If there is more than one borrower, each borrower must sign the letter. You must do so within 60 days from the postmark date on the envelope containing this letter. THIS IS THE ONLY CHANCE YOU HAVE TO RESPOND TO THIS OFFER.

If you have any questions concerning this letter, please contact _____ at _____'s toll-free number at xxx-xxx-xxxx. Please do not contact us.

You must keep paying your monthly installments on your loan from us, even if you cancel the insurance and request a refund. We value you as a customer and hope to serve your financial needs in the future.

Sincerely,

Jack R. Lee,

President, Tower Loan of Mississippi, Inc.

I did not want credit life (and accident and health) insurance. Please cancel my credit life (and accident and health) insurance and send me a refund.

_____

[consumer's name] date

_____

[consumer's name] date

Appendix B

Dear (Consumer): When you got your loan from us, you bought credit life (and accident and health) insurance. Credit life insurance benefits are paid to you (or insured), less the balance of your loan, in the event of your [or insured's] death. Credit accident and health insurance benefits make your loan payments in the event you (or insured) become(s) totally disabled and are out of work for more than two weeks. The cost of this insurance was included in your monthly payment and this insurance coverage continues to be in force.

In settlement of an action brought by the Federal Trade Commission, Tower Loan has agreed to give you an opportunity to cancel your (or insured's) credit life (and accident and health insurance.)

If you did not want credit life (and accident and health) insurance when you got your loan, we will credit your account for the amount of insurance premiums you have paid plus the finance charges on the premiums, and cancel all future insurance payments. The following chart explains how this decision will affect your loan.

Your present loan balance $_____

Your credit if you cancel insurance $_____

Your new loan balance $_____

Your present monthly payment with insurance $_____

Your new monthly payment without insurance $_____

If you cancel the insurance, you or (or insured) will not have any insurance to pay off the loan in case of death or to make your monthly payments in case of total disability. Therefore, if you wish to keep your credit insurance coverage, you do not need to do anything in response to this letter and your insurance coverage will continue as before.

If you want to cancel the insurance, please date and sign this letter and return it in the postage paid envelope provided. If there is more than one borrower, each borrower must sign the letter. You must do so within 60 days of the postmark date on the envelope containing this letter. This is the only chance you have to respond to this offer.

If you have any questions concerning this letter, please contact _____at _____'s toll-free number at xxx-xxx-xxxx. Please do not contract us.

You must keep paying your monthly installments on your loan from us, even if you cancel the insurance and request a credit to your account. We value you as a customer and hope to serve your financial needs in the future.

Sincerely,

Jack R. Lee,

President, Tower Loan of Mississippi, Inc.

I did not want credit life [and accident and health] insurance. Please cancel my credit life [and accident and health] insurance and credit my account.

_____

[consumer's name] date

_____

[consumer's name] date

Appendix C

1. Q. Why did I get this letter?

A. This letter is being sent to all of Tower's customers who have taken out a loan in the last two years. Tower has agreed to send this letter to settle an action brought by the Federal Trade Commission, a federal agency in Washington, DC.

2. Q. What was the action about?

A. The Federal Trade Commission alleged that Tower violated the Truth in Lending Act by requiring its customers to purchase credit-related insurance and then failing to include the cost in the annual percentage rate. Tower denies any wrongdoing.

3. Q. What is credit life insurance?

A. Credit life insurance provides you with financial protection in case you should die. When you got your loan from Tower, you purchased credit life insurance. This means that if you (or insured) should die before you finish paying your loan with Tower, the life insurance company will pay off your loan and give your beneficiary the balance of the insurance proceeds, if any.

4. Q. I don't understand.

A. (If insured has level-term insurance, state:) Let me give you an example. Let's assume your original loan was $1,000 and your monthly payments were $100. If after 5 payments you were to die, the insurance company would pay $500 to Tower to pay off your loan and $500 to your beneficiary or your estate.

(If insured has decreasing-term insurance, state:) Let me give you an example. If the balance due on your loan is $500 and you should die, the insurance company would pay Tower $500 and you would not owe Tower any more money.

5. Q. What if I already have a life insurance policy?

A. The Credit life insurance you purchased through Tower is in addition to any other life insurance policies you may have.

6. Q. What is accident and health insurance?

A. Accident and health insurance provides you with financial protection in case you become sick or injured. When you got your loan from Tower, you (or insured) purchased accident and health insurance. This means that if you (or insured) should become totally disabled and cannot work for more than two weeks in a row, the insurance company will make your monthly payments for you. Of course, once you (or insured) are able to return to work, the insurance company no longer makes these payments.

7. Q. What does this letter mean or why am I being given the chance to cancel my insurance?

A. Tower does not require borrowers to buy credit life or accident and health insurance to get a loan from it. This opportunity to cancel the insurance is being offered to you in case you believe you were required to purchase insurance or you did not wish to buy this insurance when you got the loan.

8. Q. What should I do if I want to cancel the insurance?

A. Sign the letter at the bottom and return it in the envelope provided. If there is more than one borrower, each must sign the letter.

9. Q. What should I do if I want to keep the insurance?

A. You do not have to do anything. Your insurance coverage will remain in force.

10. Q. What happens to my loan if I cancel the insurance?

A. If you are not two or more months past due in making your payments, you will receive a refund of all the insurance premiums you have paid plus any finance charges. The amount of the refund is on the letter Tower sent you. In addition, your monthly payment will be reduced so that you will not pay for insurance in the future. The amount of your new monthly payments are also listed on the letter Tower sent you.

11. Q. What if I am delinquent?

A. If you are two or more months past due in making your payments, your account will be credited for all of the insurance premiums you have paid plus any finance charges. If the amount of the refund is more than what you owe Tower, the balance will be refunded to you. The amount of the credit is on the letter Tower sent you. In addition, your monthly payment will be reduced so that you will not pay for insurance in the future. The amount of your new monthly payment is also listed on the letter Tower sent you.

12. Q. If I cancel the credit life insurance and then die before the loan is paid in full, what will happen?

A. (If principal borrower is insured, state:) You will not have credit life insurance through Tower to pay off your loan.

(If principal borrower is not insured, state:) You are not the person insured on this loan. That means if you died, the insurance would not pay off the loan anyway. The insurance would only pay off the loan if (insured) died.

13. Q. If I cancel the accident and health insurance and then get sick or become disabled before the loan is paid in full, what will happen?

A. (If principal borrower is insured, state:) If you cannot work for more than two weeks in a row because of sickness or disability,

you will not have insurance through Tower to make your monthly payments and you would still have to make the monthly payments.

(If principal borrower is not insured, state:) You are not the person insured on this loan. That means if you cannot work, the insurance would not make your monthly payments to Tower anyway. The insurance would only make the monthly payments if (insured) became sick or disabled.

14. Q. If I cancel the insurance, will Tower be willing to lend to me in the future?

A. Cancelling the insurance will not affect your ability to get credit from Tower in the future.

Appendix D

Do You Want to Purchase Optional Credit Insurance?

Tower Loan offers credit life, and accident and health insurance in connection with its loans. Purchase of this insurance is not required to obtain a loan with us. We are providing you with the following information to help you decide whether you want to buy this credit insurance.

Loan amount: $_____

Your monthly payment without optional insurance: $_____

Life insurance premium: $_____

Accident and Health insurance premium: $_____

Your monthly payment with optional insurance: $_____

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

TRUTH IN LENDING DISCLOSURE

Insurance

Type	Premium	Signature
Credit Life		I want credit life insurance_____
Credit Disability		I want credit disability insurance_____

Appendix E

Dear (Consumer):

We have received a request to cancel your credit life (and accident and health) insurance. Before we can cancel the insurance and issue you a refund (credit), we need your signature also. If you wish to cancel the insurance, please sign the attached letter and return it in the envelope provided. You must do so within 30 days of the date of this notice or the insurance will not be cancelled.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Tower Loan of Mississippi, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondent has failed to include the cost of mandatory credit insurance in the finance charge and annual percentage rate as required by §§ 226.4(d), 226.22, and 226.18(d) of Regulation Z, 12 CFR 226.4(d), 226.22, and 226.18(d). The complaint also alleges that respondent has failed to exclude the cost of mandatory credit insurance from the amount financed as required by § 226.18(b) of Regulation Z, 12 CFR 226.18(b). Finally, the complaint alleges that in violation of section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), respondent unfairly required consumers to execute statements to the effect that insurance was voluntarily chosen, when, in fact, insurance was required.

The proposed order requires respondent to offer its customers an opportunity to cancel the credit insurance written on their loans and obtain cash refunds or credits to their accounts. This offer is being made to ensure that all of respondent's present customers have an opportunity to decide whether they want to keep the credit insurance that respondent wrote on their loans. The proposed order also requires respondent to accurately disclose the annual percentage rate, finance charge, and amount financed in accordance with the Truth in Lending Act. The proposed order also requires respondent to provide future customers with a separate disclosure that clearly sets out the costs of the loan with and without credit insurance and that emphasizes the fact that the purchase of credit insurance is not required as a condition to obtaining a loan from respondent.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-27252 Filed 11-12-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Suspension of a Laboratory Which No Longer Meets Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes in the **Federal Register** a list of laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. This notice informs the public that, effective November 7, 1991, the following laboratory's certification is suspended: Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614-889-1061.

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, telephone: 301-443-6014, 5600 Fishers Lane, Rockville, Maryland 20857.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91-27328 Filed 11-12-91; 8:45 am]

BILLING CODE 4160-20-M

National Institute on Drug Abuse; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of an advisory committee of the National Institute on Drug Abuse in December 1991.

The Drug Testing Advisory Board will be performing reviews of National Laboratory Certification Program inspections and operations; therefore portions of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c) (2), (4), and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10-42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443-2755).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Drug Testing Advisory Board, NIDA.

Meeting Date: December 4, 1991.

Place: Holiday, Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: 9 a.m., 12 p.m.

Closed: Otherwise.

Contact: Donna M. Bush, Ph.D., room 9A–53, Parklawn Building, Telephone (301) 443–6014.

Dated: November 7, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–27294 Filed 11–12–91; 8:45 am]

BILLING CODE 4160–20–M

National Institute of Mental Health; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Mental Health Council for December 1991.

The Council will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9-105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4333).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: National Advisory Mental Health Council.

Meeting Dates: December 5–6, 1991.

Place: December 5–6—Building 31, Conference room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: December 5, 10 a.m.—5 p.m. December 6, 9 a.m.—Adjournment

Closed: December 5, 9 a.m.—10 a.m.

Contact: Carolyn Street, Ph.D., room 9-105, Parklawn Building, Telephone (301) 443–3367.

Dated: November 1, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–27295 Filed 11–12–91; 8:45 am]

BILLING CODE 4160–20–M

Health Resources and Services Administration

Final Funding Priorities for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration (HRSA) announces the final funding priorities for fiscal year (FY) 1992 Grants for Faculty Development in Family Medicine authorized under the authority of section 786(a), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607. This authority expired on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds.

The Administration's budget request for FY 1991 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 786(a) of the PHS Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 786(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR past 57, subpart Q.

The period of Federal support will not exceed 5 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service training programs and programs which provide comprehensive primary care services to the undeserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 786(a) of the Act;

(2) The degree to which the proposed project provides for the project requirements and guidelines;

(3) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

(1) Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

(2) Special consideration—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Purposed funding priorities were published in the **Federal Register** at (56 FR 29253) for public comment. One comment was received during the 30-day comment period. The respondent questioned the proposed funding priority, which was designed to encourage faculty development programs to increase their enrollments of underrepresented minorities. The respondent perceived the use of percentages in making funding determinations as constituting a quota.

The Department's response is that we had no intention of imposing a quota and, in the interest of eliminating any possible confusion, the Department has deleted this priority, pending further consideration of appropriate means to achieve program goals.

The remaining proposed funding priority will be retained as follows:

Final Funding Priority

In determining the order of funding of approved applications, a funding priority will be given to:

Applicants that currently have or propose to develop projects to provide instruction in teaching clinical pedagogical skills (may also include other critical academic skills) to medical staff of: Community Health Centers supported under PHS Act, section 330; Migrant Health Centers supported under PHS Act, section 329; Homeless Health Centers supported under PHS Act, section 340; facilities that have formal arrangements to provide primary health services to public housing communities; or hospitals and/or health care facilities of the Indian Health Service; and/or health care centers that serve a substantial number of patients from (1) a Health Professional Shortage Area (HPSA), section 332 of the PHS Act, or (2) a Medically Underserved Area (MUA) designated under provisions of PHS Act, section 330(b)(3).

Section 330 authorizes support for community health care services to medically underserved populations.

Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers.

Section 340 authorizes Health Care for the Homeless Program, as used here, means a community-based program of comprehensive primary health care and substance abuse services brought to the homeless population.

Public Housing Communities means the residents of low income public housing projects that receive Federal assistance, usually through a local public housing agency, under the provisions of the U.S. Housing Act of 1937.

Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas.

Section 330(b)(3) establishes Medically Underserved Areas which are areas designated by the PHS, based on four criteria:

(1) Infant mortality rate;

(2) Percentage of the population below the poverty level;

(3) Percentage of the population over age 65; and

(4) Number of practicing primary care physicians per 1,000 population.

This priority is consistent with a HRSA strategy to enhance the teaching capabilities in the above areas and to provide training experiences with underserved populations.

Special Consideration

Special consideration will be given to applications demonstrating a commitment to family medicine.

Public Law 100-607, section 633(a), requires that for grants issued under sections 780, 784, 785, and 786 for FY 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants, and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately 6 months from the first deadline.

Should additional programmatic information be required please contact: Mr. Donald Buysee, Chief, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C-04, Rockville, Maryland 20857, Telephone: (301) 443-3614.

This program is listed at 93.895 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 25, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-27214 Filed 11-12-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Meeting of the Genome Research Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, November 14-15, at the Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC. This meeting will be open to the public on November 14, 1991 from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec 10(d) of Public Law 92-463, the meeting will be closed to the public on November 14, 1991 from 9 a.m. to adjournment on November 15 for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892 (301) 402-0838, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: October 29, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91-27411 Filed 11-12-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU-68945]

Mountain Coal Co.; Invitation To Participate in Coal Exploration Program

Mountain Coal Company is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Emery County, Utah:

T. 17 S., R. 6 E., SLM, Utah
Sec. 2, SW¼;
Sec. 3, all;
Sec. 4, lots 1-3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 9, E½, E½W½;
Sec. 10, all;
Sec. 11, W½;
Sec. 13, W½W½;
Sec. 14, and 15, all;
Sec. 16, NE¼NW¼;
Sec. 21, E½W½, E½;
Sec. 22, and 23, all;
Sec. 24, W½W½;
Sec. 25, N½NW¼;
Sec. 26, W½SW¼NE¼, N½NE¼, NW¼, N½SW¼, W½NW¼SE¼;
Sec. 27, N½, N½S½;
Sec. 28, all;
Sec. 29, E½SE¼;
Sec. 32, E½;
Sec. 33, all.

Containing 8,504.64 acres, more or less Emery County, Utah.

Any party electing to participate in the exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City,

Utah 84145–0155, and to Mountain Coal Company, P.O. Box 1378, Price, Utah 84501. Such written notice must be received within thirty days after publication of this notice in the Federal Register.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Mountain Coal Company, is available for public review during normal business hours in the BLM Office, (Public Room, fourth floor), 324 South State Street, Salt Lake City, Utah under Serial Number UTU–68945.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–27204 Filed 11–12–91; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–020–92–4340–02–241A]

Salt Lake District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463, that a meeting of the Salt Lake District Advisory Council will be held on November 21st, 1991, beginning at 9:30 a.m. at the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah.

The agenda will include an update of multiple use of public lands in the Salt Lake District such as improved wild horse management, Box Elder County elk issue, Stansbury Island access issue, Bonneville Salt Flats salt loss issue, and the Pony Express Recreation Corridor development plan. The meeting will adjourn at 12 p.m.

Anyone that would like to make a statement to the Council must notify the District Manager, 2370 South 2300 West, Salt Lake City, UT 84119 at (801) 977–4300, before 4:30 p.m. on November 20th, 1991. A time limit will be established per person by the District Manager.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91–27205 Filed 11–12–91; 8:45 am]

BILLING CODE 4310–DQ–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31961]

Columbus & Ohio River Railroad Co.—Acquisition and Operation Exemption—Consolidated Rail Corp.; Exemption

Columbus & Ohio River Railroad Company (CUOH), a noncarrier subsidiary of Summit View Corporation,[1] has filed a notice of exemption to acquire and operate approximately 161.7 miles of line and other rail property in Coshocton, Franklin, Harrison, Jefferson, Licking, Muskingum, and Tuscarawas Counties, OH.

Consolidated Rail Corporation (Conrail) owns and operates approximately 129.1 miles of involved line, consisting of:

(1) The Weirton Secondary Track, between milepost 157.8, at Newark, and milepost 49.5, at the east side of the Gould Tunnel;

(2) The Cadiz Running Track, between its connection with the Weirton Secondary Track at Cadiz Junction (milepost 0.0) and milepost 12.8;

(3) The Hebron Industrial Track, between its connection with the Weirton Secondary Track at Heath (milepost 133.0) and U.S. Route 40 (Main Street) at milepost 138.5, in Union;

(4) The Trinway Secondary Track, between its connection with the Weirton Secondary Track at Trinway (milepost 0.3) and milepost 1.43, at the Cass/Dresden Corporate line; and

(5) The East Columbus Running Track (and its parallel track, the East Columbus Industrial Track), between mileposts 4.1 and 5.3, at Mifflin.

CUOH will also acquire Conrail's undivided one-half interest in approximately 32.6 miles of line owned and operated jointly by Conrail and CSX Transportation, Inc. (CSXT) between CSXT milepost 136.4, at Columbus, and CSXT milepost 103.8, at Newark. CUOH intends to interchange traffic with Conrail at Columbus and Gould, OH. It also might interchange with CSXT and/or Norfolk Southern Corporation at Columbus, Newark, and/or Urichsville, OH, and with Ohio Central Railroad at Morgan Run and/or Trinway, OH. Consummation is expected to occur immediately after the effective date of the exemption.

Any comments must be filed with the Commission and served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.

The filing of a petition to revoke will not automatically stay the transaction

Decided: November 6, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–27220 Filed 11–12–91; 8:45 am]

BILLING CODE 7035–01–M

[1] Summit is a holding company that controls Ohio Southern Railroad Co., The Youngstown & Austintown Railroad Company, and Ohio Central Railroad, all class III rail carriers. Before the involved transaction is consummated, the stock of CUOH will be transferred to Bank One Ohio Trust Company, N.A., Trustee, under an independent voting trust agreement pursuant to 49 CFR part 1013. Should Summit wish to remove the stock from the trust, it must first obtain Commission approval or an exemption to continue to control CUOH and the three other rail carriers.

Norfolk and Western Railway Co. and Indiana Rail Road Co.; Exemptions

In the matter of Norfolk and Western Railway Company—abandonment exemption—between Indianapolis and Tipton in Marion, Hamilton, and Tipton Counties, IN (Docket No. AB–290 (Sub-No. 117X)) and Indiana Rail Road Company, Inc.—discontinuance exemption—between Indianapolis and Tipton in Marion, Hamilton, and Tipton Counties, IN (Docket No. AB–295 (Sub-No. 1X)).

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts Norfolk and Western Railway Company (NW) and Indiana Rail Road Company (INRD) from the prior approval requirements of 49 U.S.C. 10903–10904 to permit: (1) INRD to discontinue service over a line of railroad between milepost I–2.13 at Indianapolis, IN and milepost I–41.0 at Tipton, IN, in Marion, Hamilton and Tipton Counties, IN (the Tipton line); and (2) NW to abandon service between milepost I–2.13 and milepost I–39.69, subject in (1) and (2) to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 30, 1991. Formal expressions of intent to file an offer [1] of financial

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

assistance under 49 CFR 1152.27(c) must be filed by November 25, 1991, petitions to stay must be filed by November 29, 1991, and petitions for reconsideration must be filed by November 29, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–290 (Sub-No. 117X), *et al.*, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representatives: John Broadley, Jenner & Block, 21 DuPont Circle, NW., Washington, DC 20036, and
(3) Robert J. Cooney, Three Commercial Place, Norfolk, VA 23510–2211.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721).

Decided: November 4, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–27221 Filed 11–12–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given, in accordance with section 122(d)(2) of Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), of the following. On October 31, 1991, a proposed Consent Decree ("Decree") was lodged with the United States District Court for the Northern District of Indiana in *United States* v. *Active Products Corporation, et al.*, Civil Action No. F 91-00247 (N.D. Ind.). Parties to the proposed Decree include the United States—on behalf of the Environmental Protection Agency ("EPA")—and over 150 defendants. The State of Indiana also is participating in the proposed Decree, as a plaintiff. The proposed settlement involves a site listed on the National Priority List and known as the Wayne Reclamation and Recycling Facility ("Facility"), located near Columbia City, Indiana.

Under the proposed Decree, certain of the settling defendants will undertake various response actions at the Facility, including design, implementation, operation, and maintenance of the final remedy for the Facility, which was previously selected by EPA through a Record of Decision. Settling defendants also will reimburse EPA for the costs it incurs in the future in overseeing the Facility and the response actions.

Several treatment technologies will be employed at the Facility to address soil and groundwater contamination, including groundwater extraction and treatment, and installation of a cap.

Also under the proposed Decree, the United States will be paid some $608,000 in reimbursement of response costs previously incurred by EPA in connection with response actions already taken at the Facility.

The proposed Decree also includes a *de minimis* settlement. Defendants qualifying under EPA's determinations as *de minimis* contributors of hazardous substances which are connected to the Facility are settling on that basis. Those settlors are paying cash premiums as part of the settlement and are receiving covenants not to sue that reach liability for both past and future response actions and costs.

The proposed Decree also includes payments from the defendants totalling $76,000 in resolution of a claim for natural resource damages held by the U.S. Department of the Interior, as a natural resources trustee.

The Department of Justice will receive comments relating to the proposed Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Active Products Corporation, et al.*, D.J. Ref. No. 90-11-3-603. The proposed Decree may be examined at the Office of the United States Attorney for the Northern District of Indiana, 3128 Federal Building, 1300 South Harrison Street, Fort Wayne, Indiana, or at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave. NW., Box 1097, Washington, DC 20004 (202–347–7829). A copy of the proposed Decree may be obtained in person or by mail from the Document Center. In requesting a copy of the complete decree, please enclose a check in the amount of $137.50 (25 cents per page reproduction costs) and make the check payable to Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice

[FR Doc. 91–27214 Filed 11–12–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on November 6, 1991, a proposed consent decree in *United States* v. *Akzo Coatings, Inc., et al.*, Civil Action No. 91–C–7131, was lodged with the United States District Court for the Northern District of Illinois. The United States filed this action pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the cleanup of the Acme Solvents Reclaiming, Inc. ("Site"), located in Winnebago County, Illinois and for the recovery of costs expended by the United States in connection with the Site.

The proposed consent decree is entered into between the United States (on behalf of the United States Environmental Protection Agency ("U.S. EPA")), and thirty-one defendants. Under the proposed decree, the defendants have agreed to perform a remedial action at the Site that is estimated to cost $16 million. The principal components of the remedy for the Site include the following: Fencing of the Site; further delineation of the extent of soil, sludge, and groundwater contamination; treatment of the contaminated soils and sludges by low temperature thermal stripping followed, if necessary, by solidification; treatment of the contents of two on-site tanks by off-site incineration and disposal of the tanks; provision of an alternate water supply to affected residences; extraction and treatment of groundwater; treatment of soil (and bedrock, if determined by U.S. EPA to be feasible) by vapor extraction; construction of a Resource Conservation and and Recovery Act (RCRA) subtitle C compliant cap or soil cover; monitoring of groundwater and air emissions; and operation and maintenance of all remedial action components.

The proposed decree also requires the settling parties to pay $1,006,772 in past costs incurred by U.S. EPA, as well as the oversight costs that U.S. EPA will

incur in connection with the remedial action.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. All comments should refer to *United States* v. *Akzo Coatings, Inc., et al., DJ Ref # 90–11–2–177A.*

The proposed consent decree may be examined at the following offices: (1) The United States Attorney's Office, room 1500, 219 South Dearborn Street, Chicago, Illinois 60604; (2) the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004. Copies of the proposed decree may be obtained in person or my mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC.

Any request for a copy of the decree, not including Exhibits or Settling Defendant signature pages, should be accompanied by a check in the amount of $16.00 ($.25 per page) for copying costs. Any request for a copy of the decree including Exhibits and Settling Defendant signature pages should be accompanied by a check in the amount of $52.50 ($.25 per page) for copying costs. The check should be made payable to the "Consent Decree Library".

Roger Clegg,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 91–27279 Filed 11–12–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on October 4, 1991, filed a written notification on behalf of Bellcore and Rockwell International Corporation ("Rockwell") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Rockwell is a Delaware corporation with its principal place of business at 1049 Camino Do Rios, P.O. Box 1085, Thousand Oaks, California 91358.

Bellcore and Rockwell entered into an agreement effective as of September 17, 1991 to engage in cooperative research in connection with advanced experimental prototype high-speed compound semiconductor devices to better understand their applications in facilitating future exchange and exchange access services, including prototype fabrication for the experimental demonstration of such technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–27215 Filed 11–12–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—The SQL Access Group, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The SQL Access Group, Inc. ("the Group") on October 4, 1991, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On March 1, 1990, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 5, 1990 (55 FR 12750). On June 5, 1990, August 31, 1990, December 6, 1990, March 21, 1991, June 7, 1991, and September 9, 1991, the Group filed additional written notifications. The Department published a notice in the **Federal Register** in response to the additional notifications on July 18, 1990 (55 FR 29277), October 17, 1990 (55 FR 42081), January 7, 1991 (56 FR 536), April 25, 1991 (56 FR 19126), July 19, 1991 (56 FR 33308), and October 8, 1991 (56 FR 50729), respectively.

The following party, which was inadvertently listed in the last notification as no longer being a member of the Group, is currently a member of the Group: Mimer Software AB, Box 1713, S–751 47, Sweden.

The following previously-identified member is no longer a member of the Group: Microrim, 3925 159th Avenue, NE., Redmond, WA 98073–9722.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–27216 Filed 11–12–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–26,196]

Rumford National Graphics of Belfast, Inc., Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 9, 1991, applicable to all workers of Rumford National Graphics of Belfast, Inc., a/k/a Humboldt National Graphics, Journal Press Division, Belfast, Maine. The notice was published in the **Federal Register** on October 29, 1991 (56 FR 55691).

The Department, on its own motion, is amending the subject certification by deleting the October 1, 1991 termination date in order that workers at the Corporate Office of Humboldt National Graphics in North Portland, Maine who supply essential services would be eligible to apply for trade adjustment assistance under an existing certification, TA–W–26,220.

Therefore, the certification is amended by deleting the termination date. The amended notice applicable to TA–W–26,196 is hereby issued as follows:

All workers of Rumford National Graphics of Belfast, Inc., a/k/a Humboldt National Graphics, Journal Press Division, Belfast, Maine who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this November 1, 1991.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-27259 Filed 11-12-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26, 273]

International Drilling Fluids Williston, ND; Negative Determination Regarding Application for Reconsideration

By an application dated October 21, 1991, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 16, 1991 and published in the **Federal Register** on October 29, 1991 (56 FR 55690).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claims that the Department was inconsistent in denying trade adjustment assistance to workers of IDF while certifying similar workers of M-1 Drilling Fluids, Milpark Drilling Fluids and Unibar Drilling Fluids. The petitioner also claims that a foreign firm purchased IDF with plans to operate overseas.

The Department's denial was based on the fact that the workers provide retail and consulting services and as such do not produce an article within the meaning of section 223(3) of the Trade Act. The Department's initial denial elaborated fully on the service issue.

The Omnibus Trade and Competitiveness Act of 1988 (OTCA) extended trade act benefits to workers in the oil and gas drilling and exploration industries. These workers were previously excluded from coverage because their activities were considered to be services. The intent of OTCA was to eliminate the distinction between the integrated oil companies that actually produce and market an article (crude oil) and the numerous independent contractors that provide a range of services to the integrated oil companies.

However, IDF activities are one step away from drilling and exploring. The Williston workers provided retail and consulting services to operational drilling rigs. IDF blended muds and sold drilling muds and chemical drilling additives on a retail basis to drilling companies. The workers did not install the mud but acted as consultants at the drilling sites. These activities do not meet the drilling and exploration requirements necessary for certification.

The Department certified the workers at Unibar because they applied the drilling muds at the site; consequently, they are *de facto* part of the drilling process. With respect to Milpark and M1 Drilling Fluids they met the drilling and exploration requirements at the time of certification.

Finally, the parent company's plans to market its services overseas obviously would not provide a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of November 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 91-27264 Filed 11-12-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of October 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,303; Peterson Spring, Kalamazoo, MI

TA-W-26,229; Ralco Contracting Co., Inc., Jersey City, NJ

TA-W-26,238; White River Industry, Gainesville, MO

TA-W-26,290; Boggs Natural Gas Co., Spencer, WV

TA-W-26,320; BASF, Hamtramck, MI

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,154; General Motors Corp, CPC Willow Run, Ypsilanti, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,154A; General Motors Corp, Truck & Bus Div., Flint Assembly #2, Flint, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,154B; General Motors Corp, Truck & Bus Div., Flint Assembly #1, Flint, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,265; Alcoa Fujikura Ltd, Del Rio, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,116; Unisys Corp, Flemington, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,283; Stauros Partners, Inc., Oklahoma City, OK

U.S. imports of crude oil declined absolutely and relative to domestic shipments in the first half of 1991 compared tr the same period in 1990.

TA–W–26,265; Aloca Fujikura Ltd, Del Rio, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,197; Shawmut Development Corp., Kittanning, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,282; St. Marys Carbon Co., St. Marys, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,275; Lehigh Coal & Navigation Co., Lansford, PA

U.S. imports of coal were negligible in 1989 and 1990 and in first quarter of 1991.

TA–W–26,218 and TA–W–26,219; Humboldt National Graphics North Abington, MA and Portland ME

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA–W–26,280; Robertson Shake Mill, Inc., Chehalis, WA

A certification was issued covering all workers separated on or after August 22, 1990.

TA–W–26,203; Aluminum Co of America (Alcoa), Bauxite, AR

A certification was issued covering all workers separated on or after August 5, 1990.

TA–W–26,228; Quality House, Inc., Sioux Falls, SD

A certification was issued covering all workers separated on or after August 7, 1990.

TA–W–26,240; Cambridge Shirt Manufacturing Co, Hazleton, PA

A certification was issued covering all workers separated on or after August 14, 1991.

TA–W–26,373; Unisys Corp., Printed Circuit Operations, Salt Lake City, UT

A certification was issued covering all workers separated on or after August 12, 1990.

TA–W–26,284; Texscan Corp, Communications Products Div., El Paso, TX

A certification was issued covering all workers separated on or after August 19, 1990.

TA–W–26,223; Northland, A Div. of the Scott Fetzer Co., Watertown, NY

A certification was issued covering all workers separated on or after June 15, 1990.

TA–W–26,163; Marina Di Italia Sportswear, Inc., Westbury, NY

A certification was issued covering all workers separated on or after July 23, 1990 and before June 30, 1991.

TA–W–26,220; Humboldt National Graphics, Corporate Office, North Portland, ME

A certification was issued covering all workers separated on or after January 1, 1991.

TA–W–26,274; L & A Swimwear Corp., Westbury, NY

A certification was issued covering all workers separated on or after July 23, 1990.

TA–W–26,062; General Dynamics Fort Worth Div., Fort Worth, TX

A certification was issued covering all workers separated on or after June 29, 1990.

I hereby certify that the aforementioned determinations were issued during the month of October, 1991. Copies of these determiantions are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 4, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–27263 Filed 11–12–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26,081]

Teledyne Pittsburgh Tool Steel Monaca, PA; Negative Determination Regarding Application for Reconsideration

By an application dated October 15, 1991, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice for petition TA–W–26,081 was signed on September 23, 1991 and published in the **Federal Register** on October 9, 1991 (56 FR 50949).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claims that the Department's survey of Teledyne Pittsburgh's customers was inadequate since it did not include customers of tool steel. The petitioner submitted an additional list of customers for tool steel.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the customers of the workers' firm. The Department's survey of major declining customers of cold finished steel products showed that none of the respondents reported increasing their purchases of imported cold finished steel products during the period under investigation.

Investigation findings show that the Department's survey of cold finished steel customers included tool steel customers as well as steel bar customers. Some of the tool steel customers submitted by the petitioner were included in the Department's survey and the others were not customers in the period relevant to the petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the facts or of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this November 5, 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services; Unemployment Insurance Service.

[FR Doc. 91–27262 Filed 11–12–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,230]

Tredegar Molded Products, Brooklyn Heights, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of eligibility to Apply for Worker Adjustment Assistance on April 3, 1991, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on May 21, 1991 (56 FR 23304).

At the request of the Regional Office the Department reviewed the subject

certification. New information shows that several workers were separated after the Department's termination date. Therefore, the certification is amended by substituting a new termination date of January 1, 1991. Notice TA–W–25,230 is amended as follows:

All workers of Tredegar Molded Products, Brooklyn Heights, Ohio who became totally or partially separated from employment on or after December 10, 1989 and before January 1, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 4th day of November 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–27260 Filed 11–12–91; 8:45 am]

BILLING CODE 4510–30–M

Commission on Achieving Necessary Skills; Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) on February 20, 1990. The SCANS is to advise the Secretary on national competency guidelines for the skills required of high school graduates for entry into employment. The Commission has the practical task of specifying and quantifying levels of skills' attainment to perform different types of jobs adequately.

TIME AND PLACE: The eighth meeting will be held on December 6, 1991 from 8:30 a.m. until 5 p.m. at the Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001, Constitution Ballroom.

AGENDA: The agenda for the meeting follows:

1. Review draft outline of Education Issues
2. Hear presentations on Assessment and Equity Issues
3. Review Assessment/Certification Issues
4. Approve Levels of proficiency for SCANS Competencies and Foundation Skills
5. Discuss Final Report Outline
6. Public Comments

PUBLIC PARTICIPATION: The meeting will be open to the public. Time will be set aside for public comments. Seating will be available for the public on a first-come, first-served basis. Five seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Arnold Packer, Executive Director, SCANS—room C–2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Papers received on or before November 29, 1991 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Packer, Exec. Dir., SCANS—room C–2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–4840.

Signed at Washington, DC this 6th day of November 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–27261 Filed 11–12–91; 8:45 am]

BILLING CODE 4510–30–M

Quarterly Reporting Requirements for Public Employment Service Programs of State Employment Security Agencies

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice publishes the revised Form ETA 9002, Employment Service (ES) Quarterly Report and definitions. States are required to submit ES quarterly reports on or in the format of Form ETA 9002 to the Employment Administration (ETA) pursuant to the Wagner-Peyser Act and 38 U.S.C. 2007(a), (b), and (c) and 2012(c).

EFFECTIVE DATE: July 1, 1992. Thus, the report is first applicable with respect to activities in the first calendar quarter of Program Year 1992, *i.e.*, July 1—September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Diane Mayronne, Telephone: (202) 535–0185.

SUPPLEMENTARY INFORMATION:

GENERAL REPORTING REQUIREMENTS: Effective July 1, 1992, each State Employment Security Agency (SESA) shall submit the required revised Form ETA 9002 to the ETA Regional Office (RO) within 45 calendar days after the end of the quarterly report period. The ETA 9002 reports for Employment Service Programs will be submitted for Program Year quarters (9/30; 12/31; 3/31; and 6/30) and will be cumulative to date from July 1 for each program. SESAs may determine whether these reports are submitted in writing on the form or as a computer printout, but each report must include a signature and title of the signer, the date signed, and the telephone number, arrayed as shown on the form.

If revisions are made to report data by the SESA after the original submittal of data for the quarterly report period, copies of such revised reports must be provided to the RO as soon as possible.

These reporting requirements are approved by the Office of Management and Budget (OMB) according to the Paperwork Reduction Act of 1980, under OMB approval No. 1205–0240, through July 31, 1994.

Signed at Washington, DC, on November 5, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510–30–M

ETA 9002 Quarterly Report

U.S. Department of Labor
Employment Service Programs

State	Program Year	Quarter	OMB No. 1205-0240 Expires: 07/31/94

	Cumulative year-to-date	A	B					C		
		TOTAL APPLICANTS	RACE					EMPLOYMENT STATUS		
			White	Black	Hisp.	Am In/ Al Nat	Asian Pac Isl	Employed	Unempl	UI Claimant
		1	2	3	4	5	6	7	8	9
1	Total Active Applicants									
2	Veterans									
3	Male									
4	Female									
5	Youth									
6	Adult (22 and over)									
7	22 - 44									
8	45 - 54									
9	55 and over									
10	Econ Disadv Total									
11	Welfare									
12	Assessment Services									
13	Interviewed									
14	Counseled									
15	Tested									
16	Assigned Case Mgr.									
17	Prov. Case Mgt. Ser.									
18	Voc Guide Ser Provided									
19	Ref. to Other Serv									
20	Ref. to Skills Tr									
21	Ref. to Fed Tr									
22	Ref to JTPA									
23	Ref to Other Training									
24	Ref to Educ Serv									
25	Ref to Support Serv									
26	Training Placements									
27	Fed Tr. Placements									
28	Job Search Activities									
29	Referred to Employment									
30	Referred to Fed. Job									
31	Referred to FCJL Job									
32	Referred to Perm Job (+150 days)									
33	Entered Employment									
34	Placed Total									
35	Placed (under 22)									
36	Placed (22-44)									
37	Placed (45-54)									
38	Placed (55 & over)									
39	Placed in Fed Job									
40	Placed in FCJL Job									
41	Placed in Perm Job (+150 days)									
42	Obtained Employment									
43	Rec Some Report Serv Transactions									
44	Assessment Serv Total									
45	Interviewed									
46	Counseled									
47	Tested									
8	Referred to Employment									
49	Placed									
50	Obtained Employment									

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ETA 9002 Quarterly Report (Cont'd)

State | Program Year | Quarter

	Cumulative year-to-date	D EDUCATION				E Persons w/ Disabilities	F Dislocated Workers	G MSFW	H Interstate
		In School	Less HS	HS/GED	Postsec. Deg/Certif.				
		10	11	12	13	14	15	16	17
1	Total Active Applicants								
2	Veterans								
3	Male								
4	Female								
5	Youth								
6	Adult (22 and over)								
7	22 - 44								
8	45 - 54								
9	55 and over								
10	Econ Disadv Total								
11	Welfare								
12	Assessment Services								
13	Interviewed								
14	Counseled								
15	Tested								
16	Assigned Case Mgr.								
17	Prov. Case Mgt. Ser.								
18	Voc Guide Ser Provided								
19	Ref. to Other Serv								
20	Ref. to Skills Tr								
21	Ref. to Fed Tr								
22	Ref to JTPA								
23	Ref to Other Training								
24	Ref to Educ Serv								
25	Ref to Support Serv								
26	Training Placements								
27	Fed Tr. Placements								
28	Job Search Activities								
29	Referred to Employment								
30	Referred to Fed. Job								
31	Referred to FCJL Job								
32	Referred to Perm Job (+150 days)								
33	Entered Employment								
34	Placed Total								
35	Placed (under 22)								
36	Placed (22-44)								
37	Placed (45-54)								
38	Placed (55 & over)								
39	Placed in Fed Job								
40	Placed in FCJL Job								
41	Placed in Perm Job (+150 days)								
42	Obtained Employment								
43	Rec Some Report Serv Transactions								
44	Assessment Serv Total								
45	Interviewed								
46	Counseled								
47	Tested								
48	Referred to Employment								
49	Placed								
50	Obtained Employment								

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ETA 9002 Quarterly Report (Cont'd)

State | Program Year | Quarter

I

VETERANS

	Cumulative year-to-date	TOTAL				VIETNAM ERA				DISABLED	
		22-44	45-54	55+	Total	22-44	45-54	55+	Total	22-44	45-54
		18	19	20	21	22	23	24	25	26	27
1	Total Active Applicants										
2	Veterans										
3	Male										
4	Female										
5	Youth										
6	Adult (22 and over)										
7	22 - 44										
8	45 - 54										
9	55 and over										
10	Econ Disadv Total										
11	Welfare										
12	Assessment Services										
13	Interviewed										
14	Counseled										
15	Tested										
16	Assigned Case Mgr.										
17	Prov. Case Mgt. Ser.										
18	Voc Guide Ser Provided										
19	Ref. to Other Serv										
20	Ref. to Skills Tr										
21	Ref. to Fed Tr										
22	Ref to JTPA										
23	Ref to Other Training										
24	Ref to Educ Serv										
25	Ref to Support Serv										
26	Training Placements										
27	Fed Tr. Placements										
28	Job Search Activities										
29	Referred to Employment										
30	Referred to Fed. Job										
31	Referred to FCJL Job										
32	Referred to Perm Job (+150 days)										
33	Entered Employment										
34	Placed Total										
35	Placed (under 22)										
36	Placed (22-44)										
37	Placed (45-54)										
38	Placed (55 & over)										
39	Placed in Fed Job										
40	Placed in FCJL Job										
41	Placed in Perm Job (+150 days)										
42	Obtained Employment										
43	Rec Some Report Serv Transactions										
44	Assessment Serv Total										
45	Interviewed										
46	Counseled										
47	Tested										
48	Referred to Employment										
49	Placed										
50	Obtained Employment										

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ETA 9002 Quarterly Report (Cont'd)

State | Program Year | Quarter

I

VETERANS

	Cumulative year-to-date	DISABLED		SPECIAL DISABLED				ELIGIBLE PERSONS			
		55+	Total	22-44	45-54	55+	Total	22-44	45-54	55+	Total
		28	29	30	31	32	33	34	35	36	37
1	Total Active Applicants										
2	Veterans										
3	Male										
4	Female										
5	Youth										
6	Adult (22 and over)										
7	22 - 44										
8	45 - 54										
9	55 and over										
10	Econ Disadv Total										
11	Welfare										
12	Assessment Services										
13	Interviewed										
14	Counseled										
15	Tested										
16	Assigned Case Mgr.										
17	Prov. Case Mgt. Ser.										
18	Voc Guide Ser Provided										
19	Ref. to Other Serv										
20	Ref. to Skills Tr										
21	Ref. to Fed Tr										
22	Ref to JTPA										
23	Ref to Other Training										
24	Ref to Educ Serv										
25	Ref to Support Serv										
26	Training Placements										
27	Fed Tr. Placements										
28	Job Search Activities										
29	Referred to Employment										
30	Referred to Fed. Job										
31	Referred to FCJL Job										
32	Referred to Perm Job (+ 150 days)										
33	Entered Employment										
34	Placed Total										
35	Placed (under 22)										
36	Placed (22-44)										
37	Placed (45-54)										
38	Placed (55 & over)										
39	Placed in Fed Job										
40	Placed in FCJL Job										
41	Placed in Perm Job (+ 150 days)										
42	Obtained Employment										
43	Rec Some Report Serv Transactions										
44	Assessment Serv Total										
45	Interviewed										
46	Counseled										
47	Tested										
48	Referred to Employment										
49	Placed										
50	Obtained Employment										

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Job Openings Received and Filled by Occupational Category and Standard Industrial Classification (S/C)

U.S. Department of Labor
Employment Service Programs

	DOT	Title	TOTAL	Agri F & F	Mining	Const.	Mfg.	Transp. & Util.	Wholesale Trade	Retail Trade	Finance Ins. & Real Est.	Services	Public Admin.	Nonclass. Est.
			A	B	C	D	E	F	G	H	I	J	K	L
1.	JOB OPENINGS REC													
2.	0 - 1	Prof., Tech & Mgr.												
3.	20-24	Clerical												
4.	25-29	Sales												
5.	30	Domestic Services												
6.	31-39	Other Services												
7.	4	Farm, F & F												
8.	5	Processing												
9.	6	Machine Trades												
10.	7	Bench Work												
11.	8	Structural												
12.	90	Motor Freight												
13.	91	Transportation												
14.	92	Pkg. Mat. Hand.												
15.	93-97	Other												
	DOT	Title												
16.	JOB OPENINGS FILLED													
17.	0 - 1	Prof., Tech. & Mgr.												
18.	20-24	Clerical												
19.	25-29	Sales												
20.	30	Domestic Services												
21.	31-39	Other Services												
22.	4	Farm, F & F												
23.	5	Processing												
24.	6	Machine Trades												
25.	7	Bench Work												
26.	8	Structural												
27.	90	Motor Freight												
28.	91	Transportation												
29.	92	Pkg. Mat. Hand.												
30.	93-97	Other												
31.	FCJL Openings													
32.	No. of Fed. Contractors													

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Average Wage on Orders and Placements for Job Orders Received and Job Openings Received and Filled by Occupational Category and Agricultural Status

U.S. Department of Labor
Employment Service Programs

	Occupational Categories		JOB ORDERS REC'D	OPENINGS RECEIVED						OPENINGS FILLED					
				Total	Non-Ag		AVERAGE WAGE ON ORDER	Agricultural		Total	Non-Ag		AVERAGE WAGE ON PLCMT	Agricultural	
				Non-AG and AG	Temp	Perm		Temp	Perm	Non-AG and AG	Temp	Perm		Temp	Perm
	DOT	Title	A	B	C	D	E	F	G	H	I	J	K	L	M
1.		TOTAL													
2.	0 - 1	Prof., Tech. & Mgr.													
3.	20-24	Clerical													
4.	25-29	Sales													
5.	30	Domestic Services													
6.	31-39	Other Services													
7.	4	Farm, F & F													
8.	5	Processing													
9.	6	Machine Trades													
10.	7	Bench Work													
11.	8	Structural													
12.	90	Motor Freight													
13.	91	Transportation													
14.	92	Pkg. Mat. Hand.													
15.	93-97	Other													

CERTIFICATION I certify to the best of my knowledge and belief that this report is correct and complete.	Signature of Authorized certifying official	Date report submitted
	Type or print name and title	Telephone (area code: number: extension)

BILLING CODE 4510-30-C

ETA-9002C
Rev. Oct. 1991

INSTRUCTIONS FOR ETA FORM NO. 9002

Individual applicant counts	Entries for form A
Columns	Definition of items
A. Total applicants	Individuals who have completed the registration process and whose personal characteristics, and work history, have been recorded in the Agency's data base.
B. Race	Race would be identified by the following groups:(B2) White (non-Hispanic), (B3) Black (non-Hispanic), (B4) Hispanic, (B5) American Indian and Alaskan Native, (B6) Asian and Pacific Islander.
C. Employment status	The status of applicants, including students, at the time they initially seek the assistance of a local office to find work or skill training.
C.7. Employed	Applicants are (a) those who are currently working as paid employees, or who work in their own businesses, professions; or on their own farms; and (b) all those who are not working but who have jobs or businesses from which they are temporarily absent because of illness, bad weather, vacation, labor management disputes, or personal reasons, whether they are paid for the time off or are seeking other jobs. Members of the Armed Forces stationed in the U.S. are included.
C.8. Unemployed	Applicants who cannot be classified as employed or who, although employed, have received notice of termination of employment.
C.9. UI claimant	Individuals who, during the program year, are or have been determined monetarily eligible for benefit payments under one or more State or Federal unemployment compensation programs and whose benefit year or compensation, by reason of an extended duration period, have not exhausted their benefit rights.
D. Education	A program or course designed to develop competency in basic educational skills such as reading, comprehension, mathematics, writing, speaking and reasoning and/or programs leading to educational credentials such as a GED or high school diploma or college degree.
D.10. In-school	Applicants who are currently attending secondary, vocational, technical, or academic school full time or who are between terms and intend to return to school.
D.11. Less than high school diploma.	Applicants who have never received a high school diploma, or its equivalent and do not meet the definition for in-school applicants.
D.12. High school diploma/ GED.	Applicants who have received a high school diploma or GED and have not achieved a post secondary degree or certificate.
D.13. Postsecondary degree/ certificate.	Applicants who have received a post-secondary vocational, technical, or academic degree or certificate.
E.14. Persons with disabilities	Individuals with disabilities who have active registration as of July 1, plus all applicants with disabilities who register for services during the program year.
F.15. Dislocated workers	Dislocated workers are individuals who (1) have been terminated or laid off or who have received a notice of termination for layoff from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation; (2) have been terminated, or who have received a notice of termination of employment, as a result of any permanent closure of a plant or facility; (3) are long-term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including any older individuals who may have substantial barriers to employment by reason of age; or (4) were self-employed (including farmers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters—and—who have an active registration as of July 1, plus all applicants with disabilities who register for services during the program year.
G.16. MSFW	Migrant and seasonal farmworkers are defined as follows: (A) Seasonal farmworkers—persons who during the preceding 12 months worked for at least an aggregate of 25 or more days or parts of days in which some work was performed in farmwork, earned at least half of their earned income from farmwork, and were not employed in farm work year round by the same employer; (B) Migrant farmworkers—seasonal farmworkers who travel to do farmwork so that they are unable to return to their permanent residences within the same day. (C) Migrant food processing workers—persons who during the preceding 12 months worked at least an aggregate of 25 or more days or parts of days in which some work was performed in food processing (as classified in the 1987 Standard Industrial Classification (SIC) definitions 201, 2033, 2035, and 2037 for food processing establishments), earned at least half of their income from processing work and were not employed in food processing year round by the same employer provided that the food processing required travel such that the workers were unable to return to their permanent residences in the same day.
H.17. Interstate	Interstate applicants are the result of ES activities in the placement process involving joint action of local offices in different labor market areas and/or States in distributing job order information and referring qualified applicants.
I Veterans	A veteran is an individual who served on active duty for a period of more than 180 days and was discharged or released with other than a dishonorable discharge or was discharged or released from active duty because of a service connected disability.
Viet Nam Era	Veterans who served on active duty over 180 days—any part of which was during the period beginning August 5, 1964, and ending May 7, 1975.
Disabled	A disabled veteran is a veteran who is entitled to compensation (or who, but for the receipt of military retirement pay would be entitled to compensation) under laws administered by the Veterans' Administration or was discharged or released from active duty because of a service-connected disability.
Special disabled	A special disabled veteran is a veteran who (A) is entitled to compensation (or who, but for the receipt of military retirement pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs (DVA) for a disability, (1) rated at 30 percent or more or, (2) rated at 10 or 20 percent in the case of a veteran who has been determined by DVA to have a serious employment handicap; or (B) a person who was discharged or released from active duty because of a service-connected disability.
Eligible persons	An eligible person is one who is (1) the spouse of any person who died on active duty of a service-connected disability; or (2) the spouse of any member of the Armed Forces serving on active duty who at the time of application for assistance under this part, is listed, pursuant to 37 U.S.C. 556 and the regulations issued thereunder, by the Secretary concerned, in one or more of the following categories and has been so listed for more than 90 days: (i) Missing in action, (ii) captured in the line of duty by a hostile force, or (iii) forcibly detained or interned in the line of duty by a foreign government or power; or (3) the spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

Rows	Definition of item
1. Total activ applicants	The number of individuals who have an active registration as of July 1, plus all applicants who register for services during the Program Year.
2. Veterans	Same as item I. above.
3/4. Male/Female	Self-explanatory; usually recorded by applicants themselves. (The male/female applicant groups must be compiled for each sex separately.) The sum of items 3. and 4., in each column must be the same as the entry reported for Item 1, Total Applicants, in that column for the same report quarter of the same program year.

Rows	Definition of item
5. Youth	Under 22 years of age.
6. Adult	22 years old and over.
7. 22–44	Self-explanatory.
8. 45–54	Self-explanatory.
9. 55 and over	Self-explanatory.
10. Economically disadvantaged.	An individual who: (A) receives, or is a member of a family which receives cash welfare payments under a Federal, State, or local welfare program; or (B) is a member of a family which has received a total family income for the six-month period preceding the month of application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which on an annualized basis in relation to family size, was not in excess of the higher of: (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; or (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; or (D) is a foster child on behalf of whom State or local government payments are made; or (E) in cases permitted by regulations of the Secretary, is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements; or (F) an individual who qualifies as homeless under section 103 of the Stewart B. McKinney Homeless Assistance Act. Note: All veterans' military salaries earned and income derived through service-connected disability compensation, by law (Section 2013, title 38, U.S.C.), may not be included in making eligibility determinations based on income.
11. Welfare	A welfare recipient is an applicant who, during the course of the program year, receives or is a member of a family who receives cash welfare payments under a Federal, State, or local welfare program.
12. Assessment services	Individuals who receive an assessment interview, employment counseling, or vocational testing.
13. Interviewed	Applicants who receive an initial analysis of the strengths and weaknesses of their educational level, work history, vocational skills, or identification of employment barriers and development of a plan of action to utilize their strengths and reduce weaknesses. Outcomes of an interview may include referral to another supportive service for implementation of the plan of action. This interview is subsequent to the initial registration interview or reactivation interview that collects demographic data and work history.
14. Counseled	Applicants who receive ongoing or one-time assistance from a qualified counselor or counselor trainee to aid them in gaining a better understanding of themselves so that they can more realistically choose or change an occupation, or make a suitable job adjustment Counseling can be provided directly to an individual or through group counseling services and may result in a written employability plan.
15. Tested	Individuals who are administered a standardized test. Tests will measure the individual's possession of, interest in, or ability to acquire job skills and knowledge.
16. Assigned case manager	(Not to be completed on Form A1) All veterans for whom a local office staff member, such as Disabled Veterans' Outreach Program (DVOP) specialist or a Local Veterans' Employment Representative (LVER), has been assigned to provide one-on-one personal assistance including, but not limited to, providing advice pertaining to vocational choice, assistance in obtaining training to reach employability, and follow-up services over a period of time required to obtain employment. (Veteran applicants only).
17. Provided case management services.	(Not to be completed on Form A1) All veterans included in "Assigned Case Manager" who received counseling, referral to supportive services, job development contact, referral to job, placed in a job, referral to training, placed in training, vocational guidance service, or any combination of those services. (Veteran applicants only).
18. Vocational guidance service provided.	(Not to be completed on Form A1) All veterans who receive services provided by trained ES staff, which involve providing a wide range of information materials, suggestions and advice to veterans which are intended to assist in a vocational decision by the veteran regarding employment and training opportunities. (Veteran applicants only).
19. Referred to other services	Individuals referred to skills training, educational and/or supportive services provided by other service delivery organizations.
20. Referred to skills training	Skills training is defined as any State or Federal training program such as JTPA Institutional, Job Corps, etc. This is an unduplicated count of *all* applicants referred to training, both successful and unsuccessful.
21. Referred to federal training	This is a subgroup of "Referred to Skills Training" for veterans who are referred to any job training program supported by the Federal Government such as JTPA Institutional, Job Corps, etc. This does not include referrals to DVA–OJT or VJTA opportunities which are reported as referrals to Federal jobs.
22. Referred to JTPA	Individuals referred to a service delivery component funded with monies from the Job Training Partnership Act.
23. Referred to other training	Individuals referred to any employment and/or training service funded with dollars other than from JTPA.
24. Referred to educational services.	Individuals referred to a program or course designed to develop competency in basic educational skills such as reading, comprehension, mathematics, writing, speaking and reasoning and/or programs leading to educational credentials such as a GED or high school diploma or college degree.
25. Referred to support services.	Individuals referred to services designed to assist an individual to achieve physical, mental, social or economic well being and reduce or eliminate barriers to employment. These include health and medical services, child care, emergency financial services, relocation assistance, residential support, nutritional and legal services.
26. Training placements	Applicants verified to have entered in any State or Federal training program (JTPA Institutional, Job Corps, etc.) to which they were referred by the ES agency. Verification may be by contact (telephone or visit) with the training facility or written notification from the applicant.
27. Federal training placements	All veterans verified to have entered any job training program supported by the Federal government such as JTPA Institutional, Job Corps, etc. This does not include placements in DVA–OJT or VJTA opportunities which are included in "Placed in Jobs" and its subgroup "Placed in Federal Jobs".
28. Job search activities	All applicants provided services which are designed to help the jobseeker plan and carry out a successful job hunting strategy. The services may include resume preparation assistance, job search workshops, job finding clubs, provision of specific labor market information and development of a job search plan.
29. Referred to employment	A referral to employment is (1) the act of bringing to the attention of an employer an applicant or group of applicants who are available for a job and (2) the record of such a referral. It means the same as "referral to a job."
30. Referred to a Federal job	All veterans who are referred to a job opening filed with a placement office by a department or agency of the Federal Government or other entity under the jurisdiction of the U.S. Office of Personnel Management.
31. Referred to FCJL job	All veterans referred to a job opening listed by an employer identified as a Federal Contractor. NOTE: This item is not required for "Disabled Veterans".
32. Referred to a permanent job (+150 days).	All applicants in each category who meet the definition for Referred to Employment who are referred to a job expected to last over 150 days.
33. Entered employment	This is the sum of job placements and obtained employments.
34. Job placements	The hiring of an applicant by a public or private employer after referral to a job by the ES or by other co-located or outstationed staff in cooperation with the ES agency provided that all of the following steps were completed: (a) Prepared a job order prior to referral except in the case of a job development contact on behalf of a specific applicant, (b) made prior referral arrangements with the employer, (c) referred an individual who was not designated by the employer except for referrals to agricultural job orders for a specific crew leader or worker; (d) verified from a reliable source, preferably the employer, that the applicant had entered work and (e) recorded the placement in the agency data base.
35.–38. Placements by age	Self-explanatory.
39. Placed in Federal jobs	All veterans placed in a job opening filed with a placement office by a department or agency of the Federal Government or other entity under the jurisdiction of the U.S. Office of Personnel Management.

Rows	Definition of item
40. Placed in a FCJL job	All veterans placed in FCJL Job. Use the same definition as "49. Placed" in jobs listed by Federal contractors. NOTE: This item is not required for Disabled Veterans".
41. Placed in permanent job (+150 days).	All applicants placed in a job expected to be over 150 days duration.
42. Obtained employment	Individuals who secure employment within 90 calendar days of receiving one or more of the following services that was wholly or partially funded by the Employment Service: (a) Participation in Job Search activities, including placements resulting from the use of the Automated Labor Exchange (ALEX) (b) after receiving employment counseling or testing or development of an employability plan, (c) after receiving bonding assistance, (d) after termination from a skills training program to which an ES applicant was referred by the ES agency. (The ES applicant subsequently either may have found own job or been placed in an unsubsidized job by the training program), (e) or before expiration of a tax credit voucher, and verification has been received from a reliable source, preferably the employer, that the applicant has obtained employment and such employment does not meet the definition of a job placement.
43. Received some reportable service.	All applicants that have received some reportable service during the current program year. Services included: (a) Referral to job, (b) Job placement, (c) Placement in training, (d) Obtaining employment, (e) Assessment services, including an assessment interview, testing, counseling and employability planning, (f) Case management services, (g) Vocational guidance services, (h) Job search activities, including resume assistance, job search workshops, job finding clubs, specific labor market information and job search planning, (i) Federal bonding program, (j) Job development contacts, (k) Tax credit eligibility determination. (l) Referral to other services, including skills training, educational services, and supportive services. Application taking and/or registration are not included as reportable services in this item.
Transactions	
44. Assessment service total	The total cumulative number of times that individuals are assessed (meeting the definition for "Assessment") from the beginning of the program year (July 1).
45. Interviewed	The total cumulative number of times an individual is interviewed from the beginning of the program year (July 1).
46. Counseled	The total cumulative number of times an individual is counseled from the beginning of the program year (July 1).
47. Tested	The total cumulative number of times an individual is tested from the beginning of the program year (July 1).
48. Referred to employment	The total cumulative number of times an individual is referred to an employer job opening listed with the State Agency.
49. Placed	The total cumulative number of placements of individuals into job openings from the beginning of the program year (July 1). Include multiple placements of the same individual, provided that the job placements meet the conditions prescribed in the definition of an ES placement, including interstate. (Also, include placements in OJT, work experience and PSE.)
50. Obtained employment	The total cumulative number of times individuals obtained employment from the beginning of the program year (July 1). Use the same criteria as found in item 42.

Entries for Form B

Job Openings Received and Filled by Occupational Category and SIC

1–15.A–L Job Openings Received by Occupational Category and Standard Industrial Classification (SIC)

Enter for each occupational category the cumulative number of job openings received for totals and each SIC division from the beginning of the program year (July 1).

16–30.AL Job Openings Filled by Occupational Category and Standard Industrial Classification (SIC)

Enter for each occupational category the cumulative number of job openings filled from the beginning of the program year (July 1).

31.A FCJL Openings Received

Enter in Column A the total cumulative number of job openings received from employers identified as Federal contractors from the beginning of the program year (July 1).

32.A Number of Federal Contractors

Enter in Column A total cumulative number of Federal contractors from which one or more job openings have been received. This entry is a cumulative unduplicated count from the beginning of the program Year (July 1). through the end of the reporting period.

Note: A federal contractor is any party entering into an agreement or modification thereof in the amount of $10,000.00 or more for the procurement of supplies or personal property and non-personal services (including construction) with any department or agency of the United States ([38 U.S.C 2012 (a) and 41 CFR 60–250.2])

Entries for Form C

Job Orders/Openings Received and Filled by SIC and Occupational Category

A. Job Orders Received

1–15.A Job Orders Received

Enter by occupational category the cumulative number of job orders received from the beginning of the program year (July 1).

B.–G. Openings Received

1–15.B Total Agricultural and Non-Agricultural

Enter by occupational category the cumulative number of Agricultural and Non-Agricultural job openings received from the beginning of the program (July 1).

1–15.C Non-Agricultural Temporary

Enter by occupational category the cumulative number of Non-Agricultural Temporary job openings received from the beginning of the program year (July 1).

1–15.D Non-Agricultural Permanent

Enter by occupational category the cumulative Non-Agricultural Permanent job openings received from the beginning of the program year (July 1).

1–15.E Average Wage on Job Orders

Enter by occupational category the average wage on job orders received, for which the wage is paid on a time basis, from the beginning of the program year (July 1).

1–15.F Agricultural Temporary

Enter by column the cumulative number of agricultural temporary job openings received from the beginning of the program year (July 1).

1–15.G Agricultural Permanent

Enter by occupational category the cumulative number of agricultural, permanent job openings received

from the beginning of the program year (July 1).

H.–M. Job Opening Filled

1–15.H Total Non-Agricultural and Agricultural

Enter by occupational category the total cumulative number of non-agricultural and agricultural job openings filled from the beginning of the program year (July 1).

1–15.I Non-Agricultural Temporary

Enter by occupational category the cumulative number of non-agricultural temporary job openings filled from the beginning of the program year (July 1).

1–15.J Non-Agricultural Permanent

Enter by column the cumulative number of non-agricultural permanent job openings filled from the beginning of the year (July 1).

1–15.K Average Wage on Placement

Enter by occupational category the average wage, for which wages are paid on a time basis, that the worker will earn after beginning work, or completion of a training or probationary period. Should the job order not have a wage rate, then a default rate for the job category will be used. Each State will need to provide a prevailing wage rate for each occupational grouping that can be used in the absence of hard wage data.

1–15.L Agricultural Temporary

Enter by occupational category the cumulative number of agricultural temporary job openings filled from the beginning of the year (July 1).

1–15.M Agricultural Permanent

Enter by column the cumulative number of agricultural permanent job openings filled from the beginning of the year (July 1).

[FR Doc. 91–27265 Filed 11–12–91; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91–66; Exemption Application No. D–8648, et al.]

Grant of Individual Exemptions; The AGWAY Inc. Group Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Agway Inc. Group Trust (the Trust) Located in DeWitt, New York

[Prohibited Transaction Exemption 91–66; Exemption Application No. D–8648]

Exemption

The restrictions of section 406(a) and (b) of the Act shall not apply, effective January 1, 1991, to the reinsurance of risks and the receipt of premiums therefrom by Agway Insurance Company (AIC) in connection with an insurance contract issued by the Prudential Insurance Company of America (Prudential) to provide life and health insurance benefits to participants of the Trust, provided the following conditions are met:

(a) AIC—

(1) Is a party in interest with respect to the employee benefit plans that purchase insurance through the Trust by reason of a stock or partnership affiliation with the trustee of the Trust that is described in section 3(14)(E) or (G) of the Act.

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act.

(3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, New York, which has been renewed each year and has not been rescinded, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, New York) by the Insurance Commissioner of the State of New York within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Trust pays no more than adequate consideration for the insurance contract;

(c) No commissions are paid with respect to the acquisition of insurance by the Trust from Prudential or the acquisition of reinsurance by Prudential from AIC; and

(d) For each taxable year of AIC, the gross premiums and annuity considerations received in that taxable year by AIC for life and health insurance or annuity contracts for the Trust and all employee benefit plans (and their employers) with respect to which AIC is a party in interest by reason of a relationship to the trustee of the Trust described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by AIC. For purposes of this condition (d):

(1) the term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or

annuity contracts to the Trust and such plans (and their employers) by AIC. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by AIC.

(2) all premium and annuity considerations written by AIC for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 11, 1991 at 56 FR 46334.

EFFECTIVE DATE: This exemption is effective January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Merrill Lynch, Pierce, Fenner & Smith Incorporated

[Prohibited Transaction Exemption 91–67; Exemption Application No. D–8603]

Exemption

The following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

I. Transactions

(a) The restrictions of section 406(a)(1)(A) through (D) and (b) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the following transactions in connection with purchases and sales of securities issued by a Merrill Lynch Mutual Fund, if the conditions set forth in sections II and III are met.

(1) The The effecting by a Distributor of a purchase or sale on behalf of a plan of securities issued by a Merrill Lynch Mutual Fund.

(2) The receipt of a sales commission by a Distributor in connection with the purchase of sale by a plan of securities issued by a Merrill Lynch Mutual Fund.

II. General Conditions

(a) The transaction is effected by a Distributor in the ordinary course of its business as an investment company principal underwriter.

(b) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be.

(c) The combined total of all fees, commissions and other consideration received by a Distributor for the provision of services to the plan and in connection with the purchase or sale of securities issued by a Merrill Lynch Mutual Fund is not in excess of "reasonable compensation" within the contemplation of sections 408(b)(2) and 408(c)(2) of the Act and sections 4975(d)(2) and 4975(d)(10) of the Code. If such total is in excess of "reasonable compensation," the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and the excess taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

III. Specific Conditions

(a) The Distributor is not (1) a trustee of the Plan (other than by reason of serving as a nondiscretionary trustee who does not render investment advice with respect to any assets of the plan or a trustee of a qualified group trust within the meaning of Revenue Ruling 81–100; (2) a plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code); or (3) a fiduciary who is expressly authorized in writing to manage, acquire or dispose on a discretionary basis of those assets of the plan that are or could be invested in securities issued by a Merrill Lynch Mutual Fund or in units of a qualified group trust within the meaning of Revenue Ruling 81–100; or (4) an employer any of whose employees are covered by the plan.

(b) Prior to the execution of a transaction, the Distributor provides to the Independent Fiduciary with respect to the plan:

(1) A written document separate from the fund prospectus which lists, the types of information required to be disclosed under paragraph (2) of this subsection, and describes where such information can be located; and

(2) The following information in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in investment matters:

(A) The nature of the Distributor's relationship to the Merrill Lynch Mutual Fund and the limitation, if any, that such relationship places upon its ability to recommend investment company securities.

(B) The sales commission, expressed as a percentage of the dollar amount of the plan's gross payment and of the amount actually invested, that will be received by the Distributor in connection with the purchase or sale of the recommended securities issued by the investment company;

(C) A full, and detailed disclosure of any other charges, fees, discounts, penalties, or adjustments which may be imposed in connection with the purchase, holding, exchange, termination or sale of such securities.

(D) A description of the investment objectives and policies of the Fund or Funds whose securities are being purchased or sold, and the principal risk factors associated with investment in such Fund or Funds;

(E) A description of the management of the Fund or Funds, including the board of directors and the investment adviser and their affiliations (if any) with Merrill Lynch, and any other person or persons who provide significant, administrative or business affairs management services;

(F) A statement of expense of the Fund or Funds;

(G) A description of the procedure or procedures for redeeming securities of the Fund or Funds;

(H) A description of any material pending legal proceedings involving the Fund or Funds.

(3) Following receipt of the documents required to be provided to the Independent Fiduciary as described in paragraph (b)(1) of this section, and prior to the execution of the transaction, the Independent Fiduciary shall acknowledge in writing: (a) that he has received the document required in paragraph (b)(1) of this section; (b) that he has authority to approve or disapprove investments on behalf of the plan; and (c) that any purchase of shares of any Merrill Lynch Mutual Fund on behalf of the plan shall be preceded by his approval of the plan's investment in the Merrill Lynch Mutual Fund.

(4) Following execution of the acknowledgement required under paragraph (b)(3) of this section and prior to the execution of the transaction, the Independent Fiduciary approves the specific transaction on behalf of the Plan. Unless facts or circumstances would indicate to the contrary, such approval may be presumed if the Independent Fiduciary permits the transaction to proceed after receipt of the written disclosures. Such fiduciary may be an employer of employees covered by the plan, but may not be a principal underwriter involved in the transactions. Such fiduciary may not receive, directly or indirectly (e.g., through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(c)(1) With respect to additional purchases of securities issued by Merrill Lynch Mutual Funds, the written disclosure required under paragraph (b)(1) of this section need not be repeated, unless—

(A) More than one year has passed since such disclosure was made with respect to the same kind of security, or

(B) The security being purchased or sold or the commission with respect thereto is materially different from that for which the approval described in subparagraph (b)(4) of this section was obtained.

(d)(1) The Distributor shall retain or cause to be retained for a period of six years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to paragraphs (b) and (c) of this section; and

(B) Any additional information or documents provided to the Independent Fiduciary described in paragraph (b) of this section with respect to such transaction.

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the Distributor, such records are lost or destroyed prior to the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504 (a)(2) and (b) of the Act, such records are unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization and of whose members are covered by the plan.

IV. Definitions

For purpose of this exemption:

(a) The term *Merrill Lynch Mutual Fund* means any investment company registered under the Investment Company Act of 1940 for which Merrill Lynch Asset Management, Inc. or Fund Asset Management, Inc. serves as investment adviser, and for which a Distributor serves as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(29)).

(b) The term *Distributor* means Merrill Lynch Funds Distributor, Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated or any affiliate.

(c) The term *affiliate* refers to

(1) Any direct or indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc.;

(2) Any person directly or indirectly controlling, controlled by, or under common control with Merrill Lynch, Pierce, Fenner & Smith Incorporated or Merrill Lynch Funds Distributor, Inc.;

(3) Any officer, director, employee (including, in the case of principal underwriter, any registered representative thereof, whether or not such person is a common law employee of such principal underwriter), or relative of any such person, or any partner in such person; or

(d) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term *Independent Fiduciary* means a fiduciary with respect to a plan, which fiduciary has no relationship to or interest in a Distributor that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(f) the term "non discretionary trustee" of a plan means a trustee whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary.

(g) The term *relative* means a *relative* as the term is defined in section 3(15) of the Act (or a *member of the family* as that term is defined in section 4975(E)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1991 at 56 FR 26441.

EFFECTIVE DATE: This exemption is effective June 7, 1991.

WRITTEN COMMENTS: The Department received two written comments, one from the applicant, Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch), and the other from FMR Corporation. The comments and the Department's modifications are discussed below.

Merrill Lynch noted that the phrase "for each investment" in section III(b)(1) of the proposed exemption was intended to refer to two distinct transactions for which exemptive relief was originally sought. Since the proposed exemption addresses only one of those investments, Merrill Lynch requests that, for the sake of clarity, the phrase "for each investment" in section III(b)(1) be deleted.

The Department has adopted this comment and modified the final exemption accordingly.

Merrill Lynch requested that the Department amend section III(b)(3) of the proposed exemption to add the following after the first sentence in that section: "Unless facts or circumstances would indicate to the contrary, such approval may be presumed if the fiduciary permits the transaction to proceed after receipt of the written disclosure." Merrill Lynch notes that a substantial portion of brokerage business is done by telephone and normal practice is for customers not to reduce their telephone orders or authorizations to writing. Thus, there is no mechanism for Merrill Lynch to assure that a plan's independent fiduciary had approved a proposed transaction as required in section III(b)(3) of the proposed exemption. Therefore, allowing for a presumption of approval by the plan's independent fiduciary is necessary for Merrill Lynch to make use of the exemption. Merrill Lynch also notes that an identical provision is contained in Prohibited Transaction Exemption 82–24 (49 FR 13208 (April 3, 1984)) (PTE 84–24). In addition, to provide additional protections for plan participants and beneficiaries, Merrill Lynch will require that the Independent Fiduciary sign a statement acknowledging receipt of the disclosure document prior to the execution of a transaction.

The Department has considered the requested modification and the additional condition proposed by Merrill Lynch and has decided to modify the final exemption as requested. Section III(b) of the final exemption has been restated to allow for a presumption of approval by the Independent Fiduciary. In addition, section III(b) has been amended to require a written acknowledgement from the Independent Fiduciary.

Finally, Merrill Lynch requested that the Department clarify the proposed exemption to provide the requested relied in any case where a Merrill Lynch affiliate serves as trustee of a qualified group trust within the meaning of Revenue Ruling 81–100. The Department has adopted this comment and modified section III(a) of the final exemption accordingly. The Department wishes to note, however, that the exemption would not be available for the investment by a Merrill Lynch group trust in Merrill Lynch Mutual Fund Securities.

FMR Corporation, the parent corporation for Fidelity Investments, a group of companies which manages mutual funds and other assets, submitted a comment to the proposed exemption. FMR Corporation suggests that section I of the exemption should not include the effecting of a purchase or sale of a Merrill Lynch mutual fund share as a transaction covered by the exemption because such activity would not in and of itself constitute a prohibited transaction.

The Department notes that Merrill Lynch requested exemptive relief for the transactions described in the proposed exemption and that such relief is very similar to that provided in PTE 84–24. Accordingly, the Department has determined not to modify the final exemption as requested.[1]

After consideration of the entire record, including the comments, the Department has determined to grant the exemption with an effective date of June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Lyssa Hall of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Colorado Container Corporation Employee Pension Plan (the Plan) Located in Denver, Colorado

[Prohibited Transaction Exemption 91–68; Exemption Application No. D–8734]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of four limited partnership interests (the Interests) to Colorado Container Corporation, a party in interest with respect to the Plan, provided the Plan receives no less than the greater of: (1) Its costs for the Interests; or (2) the fair market value of the Interests on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 20, 1991 at 56 FR 47814.

[1] In this regard, the Department notes that a number of statutory and administrative exemptions may provide relief for the purchase and sale of investment company securities by employee benefit plans. Thus, for example, see section 408(b)(2) of the Act, Prohibited Transaction Exemption 71–1 (40 FR 50845 (October 31, 1975)), and Prohibited Transaction 77–4 (42 FR 18732 (April 8, 1977)). The Department further notes that a person may avail itself of any applicable exemption provided that the conditions of such exemption are otherwise met.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of November, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–27257 Filed 11–12–91; 8:45 am]

BILLING CODE 4510–29–M

[Application No. L–8713, et al.]

Proposed Exemptions; NECA–IBEW Welfare Trust Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each notice of proposed exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section

4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

NECA-IBEW Welfare Trust Fund (the Plan) Located in Decatur, Illinois

[Application No. L-8713]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to the proposed cash sale (the Sale) of certain real property (the Property) to the Plan by Mr. Larry Lawler and Mrs. Shelby J. Lawler, husband and wife, (Mr. and Mrs. Lawler), parties in interest with respect to the Plan, provided that the plan pays the lesser of (1) $280,000, or (2) the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser. Mr. and Mrs. Lawler will also convey certain personal property (the Personal Property) to the Plan in conjunction with the transaction for no additional charge to the Plan.

Summary of Facts and Representations

1. The Plan is a jointly-trusteed, multiemployer welfare benefit plan with approximately 9,500 participants and 27,000 beneficiaries and total assets with a fair market value of approximately $24,650,488, as of June 30, 1991. The participants of the Plan are primarily electricians who are employed by approximately 1,100 contributing employers that are engaged in commercial, industrial, and residential electrical-installations. The trustees (the Trustees) of the Plan are 33 individual employees of the contributing employers who are union members of the International Brotherhood of Electrical Workers (IBEW) and 27 individuals who are management employees of the contributing employers.[1]

The applicant represents that discretionary investment decisions for the Plan are determined by the Trustees. The ministerial functions of the Plan are currently performed by a not-for-profit Illinois corporation, IBEW-NECA Benefits Administration Association, which is wholly owned by the Plan. Prior to 1991, the ministerial functions of the Plan had been performed by two preceding, independent organizations: Kelly & Associates which during 1989 was purchased and succeeded by Zenith Administrations, Inc.

Mr. Lawler, a former journeyman electrician and Business Manager of Local Union 146 of the IBEW in Decatur, Illinois, was hired in 1979 as the Office Manager in Decatur, Illinois for Kelly & Associates and, subsequently, in the same capacity, by Zenith Administrators, Inc., and then, by IBEW-NECA Benefits Administration Association. He is represented by the applicant to have no discretionary power, authority, or responsibility of a fiduciary with respect to the management or administration of the Plan or its assets. Mr. Lawler is represented by the applicant to be limited to the capacity of Office Manager, supervising 32 employees in performing ministerial functions for the Plan.

2. The Property, where the ministerial functions of the Plan continue to be performed, was acquired on December 21, 1979, by Mr. Lawler. Since September 24, 1985, Mr. Lawler has shared ownership of the Property with his wife, as joint tenants with right of survivorship. There is a lien on the Property with an outstanding balance owing, as of August 30, 1991, in the amount of $100,025.59 to the Citizens National Bank of Decatur (the Bank).

The Property is located in Decatur, Illinois at 1650 Huston Drive in an area which is zoned light-industrial for use as office buildings, small business manufacturing, warehousing, restaurants, and like structures. The structure on the Property is a one and two story office building consisting of 6,050 square feet with a concrete foundation and concrete block walls covered on two sides with brick veneer. The land has a width of 100 feet and a depth of 219.9 feet, which is served by city water and sewer systems. Natural gas and electricity are furnished by a utility company. An area of the land consisting of 45 feet by 150 feet is paved with asphalt and another area of 48 feet by 64 feet is paved with concrete

Two independent appraisers, Mr. David M. Drobisch, CREA, of Jim Masey, Realtor, in Decatur, Illinois and Mr. Kent Fitzjarrald, MAI, of Fitzjarrald, Merrit & Smith, Real Estate Appraisers, in Decatur, Illinois have appraised the Property. On February 4, 1991, Mr. Drobisch determined that the fair market value of the Property was $280,000. On February 20, 1991, Mr. Fitzjarrald determined that the fair market value of the Property was $285,000.

3. The Plan seeks an exemption from the prohibited transaction provisions of the Act for the transfer of the Personal Property and the Sale of the Property to the Plan by Mr. and Mrs. Lawler for the lesser of $280,000, or the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser. On March 21, 1991, at a full meeting of the Trustees of the Plan, discussions were held and a vote taken to authorize the Plan to seek an exemption which would allow the Plan to purchase the Property from the Lawlers.[2] The applicant represents that the Personal Property owned by the Lawlers and located on the premises of the Property will be conveyed to the Plan for no consideration. The Personal Property includes a refrigerator, microwave oven, dishwasher, three wooden tables, 12 chairs, 11 venetian blinds, two glass entry blinds, and one large window blind.

The lien on the Property that is held by the Bank will be paid in full by Mr. and Mrs. Lawler from the proceeds of the Sale at its closing. The Plan will make a clear title to the Property with no liens remaining outstanding on the Property. No expenses will be incurred by the Plan with respect to the Sale.

4. The applicant represents that the Sale is in the interest of the Plan and its participants and beneficiaries because the Plan would be able to avoid expenses in relocating its staff and equipment to another office building. In addition, the Plan seeks to avoid expenses from reprinting summary plan descriptions, claim forms, application documents, checks, and stationery to reflect a new address if compelled to

[1] The voting rights are equally divided between the Trustees in their respective capacities as union and management representatives by a provision for fractional voting in the Trust Agreement of the Plan.

[2] The Property is currently being leased to the Plan by Mr. and Mrs. Lawler. The applicant represents that the Plan is leasing the Property in reliance upon the statutory exemption provision of section 408(b)(2) of the Act. The Department expresses no opinion as to whether such leasing of the Property to the Plan is in violation of any provision of part 4 of title I of the Act

move. The applicant represents that a change of address may cause hundreds of employers to misdirect monthly funding contributions, resulting in a delay of cash flow and interest income to the Plan.

The Trustees are represented to have concluded that the Sale of the Property to the Plan will reduce costs for the Plan by discontinuing the payments of rents and protecting the Plan from increases in rents. The Plan is represented to benefit from the Sale by eventually having funds for acquiring more equipment for its operations. Also the Sale will enable the Plan to avoid having Mr. Lawler as both an employee and a landlord. The Sale will permit the Plan to continue its operations from its location of more than 10 years and avoid disruption of services and the additional expenses of moving.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the acquisition is a one-time transaction for cash; (b) the Plan will pay the lesser (i) $280,000, or (ii) the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale; (c) the Plan will incur no costs with respect to the Sale; (d) the sale price of the Property is approximately 1.1 percent of the total assets of the Plan; and (e) the continued location of the Property is important to the Plan and convenient for its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll–free number.)

Horne CPA Group Profit Sharing Plan and Trust (the Plan) Located in Laurel, Mississippi

[Application No. D–8756]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to a proposed series of loans by the Plan (the Loans) over a five-year period, not to exceed the total principal amount of the lesser of 25 percent of the Plan's assets of $300,000, to the Horne CPA Group (the Employer), a party in interest with respect to the Plan; provided that all terms and conditions of the Loans are at least as favorable to the Plan as those which the plan could obtain in arm's-length transactions with unrelated parties.

Temporary Nature of the Exemption

This exemption, if granted, will be effective only for Loans entered into within a period of five years commencing with the date on which the exemption is published in the **Federal Register.**

Summary of Facts and Representations

1. The Plan is a defined contribution profit-sharing plan with 115 participants and assets of approximately $1,226,000 as of March 31, 1991. The Plan is sponsored by the Employer, which is a Mississippi professional corporation engaged in the practice of public accounting with its principal offices in Laurel and Jackson, Mississippi. The trustees of the Plan are Robert R. Ward, Robert L. Welborn and William F. Horne, Jr. (the Trustees), each of whom is an employee of the Employer and a participant in the Plan.

2. The Employer currently has a need to make capital improvements upon the premises which constitute its principal place of business and to purchase additional equipment. As a source of funds in this regard, the Employer proposes the Loans as a line of credit by the Plan to the Employer over a five-year period (the Loan Term), enabling the Employer to borrow funds from the Plan from time to time during the Loan Term up to the lesser of (1) $300,000 or (2) twenty five percent of the Plan's assets. The Employer is requesting an exemption to permit the Loans under the terms and conditions described herein.

3. All terms and conditions of the proposed Loans are set forth in a loan agreement (the Agreement) which requires a promissory note to be executed for each Loan (the Notes) during the Loan Term. The Agreement provides that each Loan will be repaid in sixty consecutive equal monthly installments of principal and interest beginning on the first day of the first month after the Loan's execution. Interest on the principal of each Loan shall be no less than one percent above the prime lending rate charged by Deposit Guaranty National Bank of Jackson, Mississippi (the Bank) as of the date of the making of the Loan. Such interest rate will remain fixed for one year and shall be adjusted annually on each anniversary date of the Loan to one percent above the Bank's prime lending rate as of the anniversary date. An interest rate higher than one percent above the Bank's prime rate shall be charged for any Loan with respect to which the fair market interest rate for a comparable loan of similar duration and risk is higher, as determined by the independent fiduciary, discussed below, who represents the Plan's interests under the Agreement and the Notes. Each Loan will be secured by a duly recorded first security interest in the Employer's due and payable accounts receivable, and the Agreement requires that outstanding Loans will at all times remain secured by accounts receivable worth no less than 250 percent of the total Loans outstanding. The applicant represents that for the six months prior to August 1991 the average balance of the Employer's accounts receivable was $1,345,090.40 and collection over this same period averaged 99.17 percent. The Notes will include a provision requiring the Employer to pledge additional collateral in the event the value of the accounts receivable falls below 250 percent of the Loan amount. Each Note, if not paid when due, obligates the Employer to bear all costs and expenses of collection, including attorneys fees. If any installment due under any Note is more than ten days past due, the Employer must pay a late charge of the greater of five percent of the late payment or fifty dollars.

4. The Plan's interests under the Agreement and the Notes and with respect to the Loans for all purposes are represented by an independent fiduciary, John Pearce (Pearce), an accountant in Forrest, Mississippi who represents that he is unrelated to the Employer and that he has substantial experience with the fiduciary responsibility provisions of the Act. Each individual Loan will require Pearce's advance approval, to ensure that all Loan conditions are satisfied, and Pearce's determination that the Loan is appropriate and in the best interests of the Plan. Pearce's duties include the monitoring of the Employer's performance under and repayment of the Notes and the enforcement of all Note terms, including the pursuit of appropriate legal remedies in case of default. Pearce is required to ensure that the interest rate charged for each Loan is no less than the fair market interest rate for the particular Loan, and in no event less than one percent above the Bank's prime rate. Pearce will monitor the Employer's accounts receivable and will require the Employer to pledge additional collateral in the event the value of the accounts receivable should fall below 250% of the total Loans outstanding. Pearce represents that he

has reviewed and evaluated the terms and conditions of the proposed Loans and the Plan's investment portfolio, including the Plan's liquidity requirements, and has determined that the Loans will be in the best interests of the participants and beneficiaries of the Plans. Based upon his evaluation he represents that the interest rate provisions of the Agreement provide for a fair market rate of interest for the Loans.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plan with respect to the Loans will be represented by an independent fiduciary, Pearce, who has determined that the Loans are in the Plan's best interests; (2) The Loans will bear interest at a rate not less than the fair market interest rate for such loans; (3) The Loans will remain secured by first liens on collateral with a value of no less than 250 percent of the total outstanding Loans; and (4) Each individual Loan will require Pearce's advance approval to ensure that all Loan conditions are satisfied and that the Loan is in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of November 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-27258 Filed 11-12-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces the second meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of the National Archives.

DATES: December 11, 1991, from 9 a.m. to 11 a.m.

ADDRESSES: United States Capitol Building, Lyndon Johnson Room (room S211).

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501-5350.

SUPPLEMENTARY INFORMATION: The agenda of the meeting includes review of draft of the report to Congress on the five-year plan for the management and preservation of the records of Congress and on the impact that the move to Archives II will have on the records of Congress.

The meeting is open to the public.

Dated: November 6, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91-27245 Filed 11-12-91; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works "A" Section) to the National Council on the Arts will be held on December 2-3, 1991 from 9 a.m.-9 p.m. and December 4 from 9 a.m.-6 p.m. in rooms M-07 and M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on December 2 from 9 a.m.-10 a.m. and December 4 from 4:15 p.m.-6 p.m. The topic will be introductions and orientation, and policy discussion.

The remaining portions of this meeting on December 2 from 10 a.m.-9 p.m., December 3 from 9 a.m.-9 p.m. and December 4 from 9 a.m.-6 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington,

DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 6, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–27276 Filed 11–12–91; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Support to Individuals/ Fellowships for Playwrights Section) to the National Council on the Arts will be held on December 5, 1991 from 9:30 a.m. – 6 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m. – 10 a.m. and 5:30 p.m. – 6 p.m. The topics will be introductory remarks and guidelines discussion.

The remaining portion of this meeting from 10 a.m. – 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 6, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–27277 Filed 11–12–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Division of Networking and Communications Research and Infrastructure Special Emphasis Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Networking & Communications Program.

Dates: November 25–26, 1991.

Time: 8:30 a.m.—5 p.m.

Place: Room 417, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate Networking & Communications proposals.

Contact: Mr. Aubrey Bush, NCR Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Dated: November 6, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–27202 Filed 11–12–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

ACNW Working Group on Geologic Dating; Meeting

The ACNW Working Group on Geologic Dating will hold a meeting on November 19, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 19, 1991—8:30 a.m. until the conclusion of business.

The Working Group will review the problems and limitations with various Quaternary dating methods to be used in the assessment of volcanic features and materials for the site characterization of a high-level waste repository. Dating methods to be discussed include fission track, cation ratio, potassium-argon, and uranium series. In addition, the Working Group will discuss potential problems related to sampling materials for dating and the use of geomorphic data to establish relative ages.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the ACNW Working Group, their consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will hear presentations by and hold discussions with representatives of the Department of Energy, State of Nevada, National Laboratories, and other experts on various methods of geologic dating.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Ms. Charlotte Abrams, ACNW

(telephone 301/492–8371) between 8 a.m. and 5:30 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 5, 1991.

Giorgio N. Gnugnoli,

Acting Chief, Nuclear Waste Branch.

[FR Doc. 91–27233 Filed 11–12–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 37th meeting on November 20–21, 1991, 8:30 a.m.–5 p.m., room P–110, 7920 Norfolk Avenue, Bethesda, MD each day. The entire meeting will be open to the public. Notice of this meeting was published previously in the **Federal Register** on Friday, October 25, 1991 (56 FR 55354).

The agenda for the subject meeting shall be as follows:

A. Continue work on a response to Chairman Selin on a systems analysis approach to the storage of spent fuel.

B. Complete a response to a request from Commissioner Rogers regarding whether the NRC staff has developed a suitable performance assessment program and whether the NRC staff has adequate equipment, expertise and training to conduct high- and low-level waste computer modeling.

C. Review and discuss problems and limitations with various Quaternary dating methods to be used in the assessment of volcanic features for site characterization of the proposed high-level waste repository at Yucca Mountain.

D. Consider ACNW comments on a member of issues in the field of low-level waste disposal.

E. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: November 6, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–27234 Filed 11–12–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Thermal Hydraulic Phenomena; Meeting

The Subcommittee on Thermal Hydraulic Phenomena will hold a closed meeting on November 19, 1991, 8:30 a.m., room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be closed to public attendance to discuss Westinghouse Proprietary Information (5 U.S.C. 552b(c)(4)).

FOR FURTHER INFORMATION CONTACT: Mr. Paul Boehnert, Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m.

Dated: November 5, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactor Branch.

[FR Doc. 91–27235 Filed 11–12–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on November 20, 1991, room P–422, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published previously in the **Federal Register** on Friday, October 25, 1991 (56 FR 55354).

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, November 20, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review draft safety evaluation report corresponding to chapter 10 of the EPRI's Requirements Document for Evolutionary Designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, EPRI's representatives and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 5, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–27236 Filed 11–12–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Joint Subcommittees on Advanced Boiling Water Reactors and Computers in Nuclear Power Plant Operations; Meeting

The Subcommittees on Advanced Boiling Water Reactors and Computers in Nuclear Power Plant Operations will hold a joint meeting on November 21, 1991, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 21, 1991—8:30 a.m. until the conclusion of business.

The Subcommittees will review chapter 7 of the Standard Safety Analysis Report and the related probabilistic risk assessment for the GE/Advanced Boiling Water Reactor design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff members named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the General Electric, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El-Zeftawy (telephone 301/492-9910) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 5, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch, Senior Staff Engineer.

[FR Doc. 91-27237 Filed 11-12-91; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 21, 1991 through October 31, 1991. The last biweekly notice was published on October 30, 1991 (56 FR 55840).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License And Proposed No Significant Hazards Consideration Ddtermination And Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 13, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: July 1, 1991, as revised October 18, 1991.

Description of amendments request: The proposed amendment request was originally noticed on August 21, 1991 (56 FR 41575). The revised proposed changes would update Technical Specification 5.3 (Reactor Core) and Technical Specification 5.6 (Fuel Storage) for the Joseph M. Farley Nuclear Plant, Units 1 and 2, to increase enrichments to a nominal 5.0 weight percent U-235 for optimized fuel assemblies (OFA) and for VANTAGE-5 fuel assemblies taking credit for the presence of integral fuel burnable absorbers (IFBA). These proposed Technical Specification amendments allow for storage of 5.0 weight percent enrichment U-235 OFA and VANTAGE-5 fuel in spent fuel and new fuel pit storage racks. The current licensing basis of 4.25 weight percent maximum nominal enrichment for low parasitic (LOPAR) fuel remains unchanged. A request for Technical Specification amendments to allow for use of VANTAGE-5 fuel in reactor operation has been received from the licensee by letter dated July 15, 1991, and will be addressed separately.

Since VANTAGE-5 fuel as reload fuel must be received on site several weeks prior to reactor operation, these amendments are being requested at this time to allow for receipt of the fuel. Approval of the future VANTAGE-5 fuel amendment requests will be required to allow for loading of fuel into the core and for operation of the reactor with the VANTAGE-5 fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

A. Increased Fuel Enrichment for Reactor Core

1) Operation of Joseph M. Farley Units 1 & 2 in accordance with the proposed license amendment[s] does not involve a significant increase in the probability or consequences of an accident previously evaluated because the applicable safety limits are within the bounds previously established. Neither actuation of safety systems nor accident mitigating capabilities are adversely affected by operation of the plant in accordance with the proposed license amendment[s]. The analysis demonstrated that the proposed amendment[s] does not pose a challenge to installed safety systems. Therefore, no new performance requirements are being imposed on any system or component important to safety such that any design criteria will be exceeded. The implementation of the criticality reanalysis is not an initiator for any of the postulated FSAR accidents analyzed. This analysis does not impact accident analyses or plant accident scenarios. This analysis does not impact the accidents as analyzed in the FSAR. All accident acceptance criteria continue to be met. The analysis demonstrated that the proposed amendment[s] meets the acceptance criteria for criticality for spent fuel storage racks and new fuel storage racks. Operation of the plant in accordance with the proposed license amendment[s] will not impact accident analyses or plant accident scenarios as analyzed in the FSAR.

2) The proposed license amendment[s] does not create the possibility of a new or different kind of accident from any accident previously evaluated because no changes are being made to fuel which affect fuel handling methods. No change to the plant other than that described for fuel is being made. Thus, no new failure modes are being introduced. Operation of the plant in accordance with the proposed license amendment[s] will not create any initiators for accidents, including any accidents that may be different than already evaluated in the FSAR.

3) The proposed license amendment[s] does not involve a significant reduction in a margin of safety because increasing the fuel enrichment does not change the conclusions of the accident analyses or safety limits of the plant. This analysis does not decrease the margin of safety as described in the bases to any Technical Specification. The analysis does not adversely affect the operation of the fuel.

B. Increased Allowable Enrichment of New Fuel in the Spent Fuel Storage Racks

1) Operation of Joseph M. Farley Units 1 & 2 in accordance with the proposed license amendment[s] does not involve a significant increase in the probability or consequences of an accident previously evaluated with respect to new fuel in the new fuel storage racks because the applicable safety limits do not change and are within the bounds previously established. Neither actuation of safety system nor accident mitigating capabilities are adversely affected by operation of the plant in accordance with the proposed license amendment[s]. The analysis demonstrates that the proposed amendment[s] does not pose a challenge to installed safety systems. Therefore, no new performance requirements are being imposed on any system or component important to safety such that any design criteria will be exceeded. The implementation of the criticality reanalysis is not an initiator for any of the postulated FSAR accidents analyzed. This analysis does not impact accident analyses or plant accident scenarios. The analysis does not impact the accidents as analyzed in the FSAR. All accident acceptance criteria continue to be met. In addition, the Keff design limits of 0.95 for the full water density condition and 0.98 for the optimum moderation condition are not exceeded. Therefore, dose calculations are not affected by this reanalysis. The ability to mitigate the consequences of any accidents analyzed in the FSAR is not adversely affected by the implementation of the criticality reanalysis. As such, the conclusions presented in the FSAR remain valid such that no increase in radiological consequences will result.

2) The proposed license amendment[s] does not create the possibility of a new or different kind of accident from any accident previously evaluated with respect to new fuel in the new fuel storage racks because no changes are being made to fuel which affect fuel handling methods. No change to the plant other than that described for fuel is being made. Thus, no new failure modes are being introduced. Operation of the plant in accordance with the proposed license amendment[s] will not create any initiators for accidents, including any accidents may be different than already evaluated in the FSAR.

3) The proposed license amendment[s] does not involve a significant reduction in a margin of safety with respect to new fuel in the new fuel storage racks because increasing the fuel enrichment does not change the conclusions of the accident analyses or safety limits of the plant. The Keff design limits of 0.95 for the full water density condition and 0.98 for the optimum moderation condition continue to be met.

C. Increased Allowable Enrichment of Fuel in the Spent Fuel Storage Racks

1) Operation of Joseph M. Farley Units 1 & 2 in accordance with the proposed license amendment[s] does not involve a significant increase in the probability or consequences of an accident previously evaluated with respect to fuel in the spent fuel storage racks because the applicable safety limits do not change and are within the bounds previously established. Neither actuation of safety systems nor accident mitigating capabilities are adversely affected by operation of the plant in accordance with the proposed license amendment[s]. The analysis demonstrates that the proposed amendment[s] does not pose a challenge to installed safety systems. Therefore, no new performance requirements are being imposed on any system or component important to safety such that any design criteria will be exceeded. The implementation of the criticality reanalysis is not an initiator for any of the postulated FSAR accidents analyzed. This analysis does not impact accident analyses or plant accident scenarios. The analysis does not impact the accidents as analyzed in the FSAR. All accident acceptance criteria continue to be met. In addition, the Keff design limit of 0.95 is not exceeded. Therefore, dose calculations are not affected by this reanalysis. The ability to mitigate the consequences of any accidents analyzed in the FSAR is not adversely affected by the implementation of the criticality reanalysis. As such, the conclusions presented in the FSAR remain valid such that no increase in radiological consequences will result.

2) The proposed license amendment[s] does not create the possibility of a new or different kind of accident from any accident previously evaluated with respect to fuel in the spent fuel storage racks because no changes are being made to fuel which affect fuel handling methods. No change to the plant other than that described for fuel is being made. Thus, no new failure modes are being introduced. Operation of the plant in accordance with the proposed license amendment[s] will not create any initiators for accidents, including any accidents that may be different than already evaluated in the FSAR.

3) The proposed license amendment[s] does not involve a significant reduction in a margin of safety with respect to fuel in the spent fuel storage racks because increasing the fuel enrichment does not change the conclusions of the accident analyses or safety limits of the plant. The Keff design limit of 0.95 continues to be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, P. O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Elinor G. Adensam

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: August 21, 1991

Description of amendment requests: The proposed amendments would change the KW value of Train A HPS1 pump from 696 KW to 771 KW and the KW value of Train B AFW pump from 839 KW to 903 KW. These changes in KW values would reflect the actual KW loads of Train A HPS1 pump motor M-S1A-P02 and Train B AFW pump motor

M-AFB-P01, as determined by a revised diesel generator load calculation.

The proposed amendments would also change the loading sequence for the 24 hour diesel generator surveillance tests. The diesel generators are currently loaded to approximately 110% of full load for the first 2 hours of the 24-hour run. The remaining 22 hours run at 100% of full load. The diesel manufacturer, Cooper Bessemer, has recommended a reverse loading sequence of 100% of full load for the first 22 hours and 110% of full load for the remaining 2 hours of the 24-hour loaded surveillance test. Thus, the proposed amendments would reverse the order of the 100% and 110% load runs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Involve a significant increase in the probability or consequences of an accident previously evaluated.

The diesel generators at PVNGS are manufactured by Cooper Bessemer with a maximum rated load of 5500 KW for each diesel. During a postulated accident condition, the total load on each diesel is 4991 KW (Train A) and 5222 KW (Train B). Accordingly, this leaves a margin on each diesel of 509 KW (Train A) and 278 KW (Train B). The addition of the incremental KW loads on Train A and B is still within the capacity of the diesels rated load as demonstrated in PVNGS calculation 13-EC-DG-200, revision 6, and therefore would not cause diesel generator failure by overload. A significant margin of KW for each diesel train remains after incorporating this change. As such, this change will not impact previously analyzed accidents. Also, previous load rejection tests of the diesel generator have confirmed that this change would not impact the capability of the diesel to maintain the remaining safety-related loads which may be required to mitigate the consequences of an accident.

The reversed engine loading sequence is equivalent to the existing surveillance test and is not disallowed by Regulatory Guide 1.108 which states, in part, "Demonstrate full load carrying capabilities for an interval of not less than 24 hours, of which 22 hours should be at a load equivalent to the continuous rating of the diesel generator and 2 hours at a load equivalent to the 2 hour rating of the diesel generator." Thus, the reversed sequence can be considered functionally identical to the current method used for the 24-hour loading test.

Based on the discussion of both items above, the proposed Technical Specification amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised ratings of the Train A HPSI pump motor M-SIA-PO2 and Train B AFW pump motor M-AFB-PO1 do not impact the existing analysis of an accident. The proposed change will reflect the actual (i.e., worst case) load based on calculation 13-EC-DG-200, revision 6. The change will not impact 1) the capability of the diesel generator to supply power as required, and 2) the load rejection capability of the diesel generator to reject the single largest load while maintaining voltage and frequency as required. No safety-related equipment supplied by the diesel generator is affected by the proposed component KW revisions.

In addition, the nameplate rated loads for each pump motor will still envelope the revised actual KW values as the nameplate rated load for the Train A HPSI pump motor is 787 KW while the revised actual load is 771 KW and the rated load for the Train B AFW pump motor is 982 KW while the revised actual load is 903 KW. It should also be noted that previous surveillance tests 73ST-XDG01, Class 1E Diesel Generator and Integrated Safeguards Surveillance Test-Train A, and 73ST-XDG02, Class 1E Diesel Generator and Integrated Safeguards Surveillance Test-Train B, have successfully shed loads in excess of those proposed in this amendment request. As such, no new failure modes will be introduced by the AFW and HPSI pump motor load revisions.

The reversed diesel loading sequence is functionally equivalent to the existing sequence in testing the capabilities of the diesel generator to operate at the rated overload conditions.

Additionally, the reversed sequence has been recommended by the diesel generator manufacturer as beneficial in lessening engine component wear rates.

Neither of the two amendment items described above modify the design or operation of plant equipment. Based on the discussions above, therefore, the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

Involve a significant reduction in a margin of safety.

While the KW revisions sought in these amendments represent an increase to the individual HPSI and AFW pump motor loads, it should be noted that the refinements within revision 6 to calculation 13-EC-DG-200 (i.e., the use of vendor test data along with verification of equipment rated load vs. the connected load) have resulted in an increased margin from that currently stated in UFSAR Table 8.3-3. Approval of revision 6 to 13EC-DG-200 has resulted in a net increase in KW margin for each diesel of 147 KW for Train A and 130 KW for Train B.

The reversed loading sequence and the KW revisions do not impact any equipment important to safety with respect to its availability and ability to perform its intended safety function. The proposed reversed loading sequence meets the guidance of Regulatory Guide 1.108, revision 1. Therefore, the proposed Technical Specification amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: Theodore R. Quay

Arizona Public Service Company, et al., Docket Nos. STN 50-528 and STN 50-529, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 Maricopa County, Arizona

Date of amendment requests: August 28, 1991

Description of amendment requests: The proposed amendments 1) resolve the inconsistent application of exceptions to Technical Specification (TS) 3.0.4; 2) specify an acceptable time limit for completing a missed surveillance in certain circumstances and also clarify when a missed surveillance constitutes a violation of the operability requirements of an LCO (TS 4.0.3); 3) make clarifications to allow passage through or to operational modes as required to comply with action requirements (TS 4.0.4); and 4) revise the associated Bases to incorporate the revised specifications and also the guidance provided in Generic Letter 87-09. These proposed changes are in response to Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operations [LCO] and Surveillance Requirements".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification amendments, by resolving the inconsistent applications of exceptions to Specification 3.0.4, specifying acceptable time limits for completing missed surveillances, and making clarifications allowing passage through or to operational modes as required to comply with action requirements, will minimize unnecessary shutdowns and restrictions on mode changes. This will have the effect of reducing the period of time that the plant is in transition modes during increasing or decreasing power operation. This reduces the probability of plant transients occurring

during these transitions in plant status. The proposed changes do not affect plant equipment configuration. Therefore, these amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments will minimize delays in plant startup, delays in returning to power from a lower mode, and also provide adequate time for preplanning the performance of missed surveillance tests. The objective of GL 87-09 is to eliminate overly restrictive conditions and assumptions within LCOs 3.0 and 4.0. By incorporating the guidance provided in this GL, the proposed amendments will minimize unnecessary plant shutdowns and restrictions on mode changes thereby reducing the possibility for non-typical operating conditions and the potential for new or different types of accidents. The proposed amendments do not modify the design or operation of plant equipment, and are considered Technical Specification improvements. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Involve a significant reduction in a margin of safety.

The proposed amendments, by eliminating the existing inconsistencies and overly restrictive conditions within Specifications 3.0.4, 4.0.3, and 4.0.4, provide an adequate level of plant safety at PVNGS. In addition, the proposed amendments make no changes to safety limits, setpoints, or design margins at PVNGS. Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: Theodore R. Quay

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 7, 1991

Description of amendment request: The proposed amendment would revise Pilgrim Nuclear Power Station's (PNPS) Technical Specifications by relocating parts of section 3/4.12, "Fire Protection," into Pilgrim's Final Safety Analysis Report (FSAR) and by making related changes to other Technical Specification sections in support of the relocation. These proposed changes were developed in accordance with the guidance contained in NRC Generic Letters (GL) 86-10 and 88-12 and are consistent with NRC and industry efforts to simplify Technical Specifications. The associated change to the FSAR was made in the 1991 update as part of Revision #13. These changes also make a minor administrative correction unrelated to Fire Protection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Generic Letter 88-12 encourages licensees to remove unnecessary fire protection technical specifications and incorporate the technical specification requirements into the Fire Protection Program. The technical specification requirements concerning fire protection have been incorporated into the Pilgrim Fire Protection Plan as referenced by Pilgrim's FSAR. This change to fire protection technical specifications is administrative only as is the deletion of the obsolete reference to "Appendix A" and does not affect current plant practices. Therefore, this proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Deletion of the reference to "Appendix A" is strictly administrative because the Appendix no longer exists. The proposed change to fire protection does not involve any physical alteration of plant configurations, changes to setpoints, or operating parameters. It is an administrative change only and retains all existing fire protection requirements; therefore, it does not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety. The fire protection portion of this change is in accordance with GL86-10 and 88-12 guidelines for incorporating the Fire Protection Program into Pilgrim's FSAR. The change is administrative and ensures that the Fire Protection Program will be on a consistent status with other plant features described in the FSAR. The Fire Protection Program retains all existing fire protection requirements and, therefore, an equivalent level of protection has been assured without a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199, attorney for the licensee.

NRC Project Director: Walter R. Butler

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 16, 1991

Description of amendments request: The proposed amendment will raise the minimum pressure at which the high pressure coolant injection (HPCI) system is required to be OPERABLE from greater than 113 psig to greater than 150 psig. The proposed change is being made to provide an additional margin between the HPCI steam line low pressure isolation setpoint (presently established at greater than or equal to 100 psig) and the required HPCI availability pressure (presently established at greater than 113 psig).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated. Previously evaluated accidents related to the operation of the HPCI system which involve the potential for an increase in the probability of an accident are identified in Updated FSAR [Final Safety Analysis Report] Sections 15.1.3 (subcooling) and 15.5.2 (increase reactor coolant inventory). These accidents involve inadvertent initiation of HPCI system operation and have no bearing on the reactor vessel pressure at which HPCI system operation is needed. The potential for an inadvertent initiation of the HPCI system will actually be reduced by increasing the minimum reactor vessel pressure at which the HPCI system is required to be operational. All other analyzed accidents do not involve the inadvertent initiation of the HPCI system. Therefore, the proposed change does not result in a significant increase in the probability of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated. Previously evaluated accidents related to the operation of HPCI system which involve the potential for an increase in the consequences in an accident are identified in Updated FSAR

Sections 15.2.5 (loss of auxiliary power) and 15.2.6 (loss of feedwater). These accidents are assumed to occur at 100 percent power and have no bearing on the minimum reactor vessel pressure at which HPCI system operation is needed. Furthermore, increasing the minimum pressure above which HPCI system operability is required will not alter the availability of several systems which provide adequate alternate methods of backup reactor cooling. The Low Pressure Coolant Injection (LPCI) system and the Core Spray system, both which are required to be OPERABLE when the unit is operating in OPERATIONAL CONDITIONS 1, 2, or 3 can also provide backup core cooling in the event of an accident when the reactor pressure is in the range from 0 psid up to 150 psid. Thus, increasing the minimum reactor pressure at which the HPCI system required OPERABLE from greater than 113 psig to greater than 150 psig will not affect the availability of adequate backup core cooling capability. Therefore, the proposed change will not result in a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Increasing the minimum reactor pressure at which the HPCI system is required to be OPERABLE will not cause an unplanned initiation of the HPCI system or any other plant system or equipment, nor will the change impede the initiation of any required safety system(s). The HPCI system relies on the containment suppression pool, condensate storage tank, plant D.C. electrical system, and the reactor vessel low water level and drywell high pressure instrumentation to adequately operate. The proposed increase in minimum reactor pressure at which the HPCI system would be required OPERABLE will not affect the equipment of these systems, nor will the change affect the HPCI system itself. Therefore, no new or different kind of accident than that previously evaluated will be created.

3. The proposed amendment does not involve a significant reduction in the margin of safety. As stated in the Updated Final Safety Analysis Report, the HPCI system is designed to provide rated cooling water flow for reactor pressures ranging from 1120 psid to 150 psid. The HPCI system is not designed to provide rated cooling water flow at reactor pressure below 150 psig. At reactor operating pressures ranging from 0 psig to 150 psig, the Low Pressure Coolant Injection system and Core Spray system are intended to provide the backup capability to inject emergency core cooling water, if needed. Therefore, the proposed change to increase the minimum reactor pressure at which the HPCI system is required to be OPERABLE to greater than 150 psig will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket No. STN 50-455, Byron Station, Unit No. 2, Ogle County, Illinois; Docket No. STN 50-457, Braidwood Station, Unit No. 2, Will County, Illinois

Date of application for amendments: June 28, 1991

Description of amendments request: The proposed amendment would revise a portion of the Technical Specification Tables 2.2-1 and 3.3-4, Reactor Trip System Instrumentation Trip Setpoints and Engineered Safety Features Actuation System Instrumentation Trip Setpoints, respectively. New setpoints are specified for the Low-Low Steam Generator Level-Reactor Trip/Auxiliary Feedwater Initiation and the High-High Steam Generator Level-Turbine Trip/Feedwater Isolation for the Unit 2 Model D-5 Steam Generators. These changes are necessitated by a proposed modification to relocate the lower sensing tap of the Unit 2 Steam Generator Level instrumentation to improve the exhibited level indication performance during secondary system transients and low power operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below. The proposed amendment involves several changes as follows:

1. For Byron, Unit 2, and Braidwood, Unit 2, steam generators (SG), the low-low SG water level reactor TRIP SETPOINT in Table 2.2-1 of the Technical Specification (TS) is changed from greater than or equal to 17% of the old instrument span to greater than or equal to 36.3% of the new instrument span. The corresponding ALLOWABLE VALUE is changed from greater than or equal to 15.3% of the old instrument span to greater than or equal to 35.4% of the new instrument span. The current values for TOTAL ALLOWANCE (TA), Z, and SENSOR ERROR (SE) are replaced by N.A.

2. The high-high SG water level turbine trip and feedwater isolation TRIP SETPOINT in Table 3.3-4 of the TS is changed from less than or equal to 78.1% of the old instrument span to less than to equal to 80.8% of the new instrument span. The corresponding ALLOWABLE VALUE is changed from less than or equal to 79.9% of the old instrument span to less than or equal to 82.8% of the new instrument span. The current values for TA, Z, and SE are replaced by 18.9, 12.02, and 3.2, respectively.

3. The low-low SG water level auxiliary feedwater initiation TRIP SETPOINT in Table 3.3-4 of the TS is changed from greater than or equal to 17% of the old instrument span to greater than or equal to 36.3% of the new instrument span. The corresponding ALLOWABLE VALUE is changed from greater than or equal to 15.3% of the old instrument span to greater than or equal to 35.4% of the new instrument span. The current values for TA, Z, and SE are replaced by N.A..

4. Because Braidwood, Unit 2, fuel cycle 3 is scheduled to begin in November 1991, the proposed TS changes and the corresponding modifications to relocate the lower sensing tab of the Unit 2 steam generator will not be effective until the start of fuel cycle 4. Therefore, for Braidwood, Unit 2, the above proposed TS changes will only be effective for cycle 4 and after. The existing TS will remain through cycle 3.

The following analysis of the proposed changes for the evaluation of no significant hazards consideration is in accordance with the standards set forth in 10 CFR 50.92(c).

1. Involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed modification to the D-5 steam generator tap location will not increase the probability of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). Evaluations and reanalysis have determined that the modification of the D-5 steam generator tap locations and level setpoints will not affect any equipment or circumstances assumed in the UFSAR accidents. Results from the reanalysis were either bounded by previous analyses or insignificantly changed. The replacement transmitters are the same model as the current transmitters but they will have a different range. The replacements will have identical characteristics compared to the current transmitters such that a feedwater malfunction event resulting from transmitter error will be no more

probable than already assumed in the UFSAR. No new limiting single failure is introduced by the proposed change. Therefore, there is no potential for an increase in the dose releases and the consequences of an accident previously evaluated in the UFSAR are not increased.

Since the proposed changes do not affect the initiating event of any accident and the safety functions associated with the SG are not affected by the revised D-5 SG tap locations and level setpoints, the proposed amendment changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated

The revised level instrumentation will utilize lower taps; otherwise, its function remains the same. No new modes of operation have been introduced by this modification. Since the accident analysis conclusions as presented in Chapter 15 of the UFSAR are bounding and remain valid, and no new failure mechanism has been introduced by the proposed changes, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Involve a significant reduction in a margin of safety

New Safety Analysis Limits (SAL) have been incorporated for the steam generator water low-low level and high-high level trip functions. The Technical Specification trip setpoints have accounted for instrument uncertainties to ensure that the SAL is not exceeded. The consequences of previously evaluated accidents have either been re-evaluated or re- analyzed assuming the revised SAL. The results are either bounded by previous analyses or insignificantly changed. In all cases, the results are within the applicable designing and safety criteria, and the conclusions of the UFSAR remain valid. Furthermore, the modification will improve safety since the modified system will be less susceptible to feedwater transients, thus, reducing the potential for unnecessary reactor and turbine trips and avoiding unnecessary transients on the primary and secondary systems. Therefore, the proposed modification does not result in a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 11, 1991

Description of amendments request: The proposed amendments would change the Technical Specifications to revise a position title, revise approval authority and add the Radiation Protection Program and High Radiation Area.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. Position Title Change (Section 6.1.G)

The proposed Technical Specification changes nomenclature not functionality. The intent of the proposed Technical Specification remains the same as the current Technical Specification. Thus, there is no increase in the probability or consequence of an accident previously evaluated.

b. Revision of Approval Authority (Section 6.1.G.1.b)

The proposed Technical Specification retains the overall authority for the station audit function with the same position. The current Technical Specification delegates the responsibility for the program. Therefore, allowing delegation of approval authority impacts the implementation not the intent of the Technical Specification. Thus, there is no increase in the probability or consequence of an accident previously evaluated.

c. Addition of the Radiation Protection Program and High Radiation Area (Sections 6.11 and 6.12)

The proposed change affects administrative controls exercised to restrict access to high radiation areas by plant personnel and does not affect plant system safety.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

a. Position Title Change (Section 6.1.G)

The proposed Technical Specification introduces no new actions or components. Therefore, it creates no new or different kind of accident from any accident previously evaluated.

b. Revision of Approval Authority (Section 6.1.G.1.b)

The proposed Technical Specification functions like the current Technical Specification. It differs in minor detail only. Therefore, it creates no new or different kind of accident from any accident previously evaluated.

c. Addition of the Radiation Protection Program and High Radiation Area (Sections 6.11 and 6.12)

The proposed change affects administrative controls exercised to restrict access to high radiation areas by plant personnel and does not relate to plant system safety. Therefore, this change does not create the possibility of a new or different kind of accident previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety because:

a. Position Title Change (Section 6.1.G)

The proposed Technical Specification concerns nomenclature only. Therefore it does not affect the margin of safety.

b. Revision of Approval Authority (Section 6.1.G.1.b)

Although administrative in nature, the proposed Technical Specification does cause a small decrease in the margin of safety due to the removal of one line of approval authority. However, the wording for this specification is standard for the industry and does not pose a significant reduction in the margin of safety.

c. Addition of the Radiation Protection Program and High Radiation Area (Sections 6.11 and 6.12)

The proposed change is administrative in nature and does not alter the manner in which equipment required for the safe operation of the plant is operated. There are no setpoints or operational limitations being altered or changed as a result of this revision. The changes will not affect the administrative limits in place and will not reduce the station's ability to enforce these limits. Therefore, this change has no effect on the margin of plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: October 8, 1991

Description of amendment request: The proposed amendment will reword a surveillance requirement in Technical Specification (TS) Section 4.1.1.6(b) for reactor coolant system average temperature in Modes 1 and 2, reword a footnote in TS Section 3.4.1.1 for reactor coolant loops in operation, and replace "intermediate" with "wide" in Bases Section 2.2., "Reactor Trip System Interlocks."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1.Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes will have no effect on limiting conditions for operation or the surveillance requirements.

No design basis accidents are affected by these changes. Therefore, there is no impact on the probability of occurrence or the consequences of any design basis events. No safety systems are adversely affected by the change. No failure modes associated with the changes are identified. Previous analyzed accidents are not affected. The proposed change for Section 4.1.1.6 will have no impact on the performance of the surveillance requirements. The changes in Section 3.4.1.1 and Bases for Section 2.2. are editorial in nature either to reflect as-built plant conditions or to make them consistent with the design basis assumptions.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. There is no impact on plant response to the point where it can be considered a new accident, and no new failure modes are introduced.

The proposed changes include rewording of a surveillance requirement in Section 4.1.1.6 and a footnote in Section 3.4.1.1 and revise a word in Bases Section 2.2., Reactor Trip System Interlocks, Limiting Safety System Settings.

3. Involve a significant reduction in a margin of safety.

The change[s] [do] not directly affect any protective boundaries nor [do they] impact the safety limits for the boundaries. There are no adverse impacts on the protective boundaries, safety limits, or margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: February 21, 1991

Description of amendment request: The proposed change provides pressure/temperature limits for the reactor coolant system and the reactor vessel which conform to Regulatory Guide 1.99, Revision 2, as required by NRC Generic Letter 88-11.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposal does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment incorporates the required changes to the reactor vessel (RPV) irradiation embrittlement sections pertaining to the RPV heat-up and cool-down curves. The analysis resulting in these revisions was requested by the NRC in Generic Letter 88-11 which implemented Revision 2 of Regulatory Guide 1.99.

The proposed amendment of the Technical Specifications does not increase the probability or consequences of an accident. This amendment invokes the more accurate analysis of neutron irradiation effect on RPV beltline materials as required by the NRC in Generic Letter 88-11 and Regulatory Guide 1.99 Rev. 2. No physical changes to the Fermi 2 plant will be made and no change to the normal operation of the plant will be made through implementation of this amendment, except that the curve used for hydrostatic and leak testing has been made more restrictive to better protect the reactor vessel.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment revises the technical specification heat-up and cool-down curves as affected by long-term RPV beltline material neutron irradiation. Based upon more accurate methods, described in Regulatory Guide 1.99 Rev. 2, and actual fluence data the need for more restrictive limits later in plant life has been eliminated. The hydrostatic test curve was made more restrictive based on a more conservative fracture mechanics analysis. No changes are being made to the design or functional characteristics of any system or component. No components will be added, deleted, or modified by this amendment. None of the UFSAR Chapter 15 Accident Analyses are being altered. Therefore, this amendment does not create the possibility of a new or different kind of accident than previously evaluated in the UFSAR.

(3) Involve a significant reduction in a margin of safety. The proposed amendment does not reduce the margin of safety as defined in the bases of the Technical Specifications. The proposed amendment incorporates the analysis of the Fermi 2 RPV for irradiation embrittlement into the TS curves. The analysis conforms to the NRC guidance contained in Regulatory Guide 1.99 Revision 2 as requested by Generic Letter 88-11.

Implementation of this amendment conforms to the latest and most accurate predictive model accepted by the NRC. Additional accuracy has been achieved by the inclusion of the results of the flux wire dosimetry capsule analysis for prediction of neutron fluence on the RPV beltline materials. This analysis was completed by General Electric on the flux wires from the capsule removed from the RPV inner wall beltline region during the first refueling outage. More restrictive limits for hydrostatic testing have been included by the use of a more conservative fracture mechanics analysis. The cumulative effect of these changes does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: L. B. Marsh.

Duquesne Light Company, et. al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: July 15, 1991

Description of amendment request: The proposed amendment would revise Appendix A Technical Specifications (TS) 3.4.1.6, 3.4.9.1, and 3.4.9.3. Specifically, the amendment would: 1) revise TS 3.4.1.6 by changing "or" to "and" to ensure both the actual pressurizer level and secondary water temperature of each steam generator conditions are in effect to mitigate the consequences of starting a reactor coolant pump, 2) revise Figures 3.4-2 and 3.4-3 (TS 3.4.9.1) to extend the applicability of the heatup and cooldown curves to 16 effective full

power years (EFPY), and 3) revise TS 3.4.9.3 because the over-pressure protection system (OPPS) pressure setpoint and enable temperature will change with the incorporation of the new 16 EFPY curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the new 16 EFPY curves, as well as the 9.5 EFPY curves, were developed in accordance with the methodology provided in Regulatory Guide 1.99 Revision 2. By using the new 16 EFPY curves, the OPPS pressure setpoint and enable temperature have been updated to extend their applicability to 16 EFPY. Changing the requirement from "or" to "and" in TS 3.4.1.6 provides additional assurance that the reactor coolant system will be protected against overpressure transients and will not exceed the limits of 10 CFR Part 50, Appendix G. The proposed changes do not involve any physical modifications to the facility and do not affect the manner by which the facility is operated. Therefore, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the new heatup and cooldown curves were developed in accordance with the methodology used to determine the current curves and are consistent with the methodology set forth in the regulations. Changing TS 3.4.1.6 from "or" to "and" ensures both conditions are in effect to mitigate the consequences of starting a reactor coolant pump. These changes do not affect the manner in which the facility is operated, therefore, they do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the revised heatup and cooldown curves, the OPPS pressure setpoint and enable temperature, and the change to TS 3.4.1.6 will continue to ensure the reactor coolant system will be protected from pressure transients at low temperatures. The proposed changes do not affect the manner by which the facility is operated or involve changes to equipment or features which affect the operational characteristics of the facility, therefore, they do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 10, 1991

Description of amendment request: The amendment would change the Technical Specifications (TSs) in TS 3/4.6.1.9, "Containment Purge System," and the associated TS Bases. The changes would replace the cumulative time limitation on the operation of the containment purge system and opening of the associated 20-inch isolation valves with certain safety-related criteria to be included in the limiting condition for operation (LCO). The action statements and Bases would be changed to reflect this change in the LCO. In addition, the action statements would be changed to allow isolation of a containment penetration by other means than an operable isolation valve, provided the measured leakage rate through the isolated penetration meets the surveillance requirement for leakage of an operable isolation valve (TS 4.6.1.9.2). Surveillance requirement TS 4.6.1.9.1 would be changed to require the verification of the closure of the 20-inch containment supply and exhaust isolation valves every 31 days instead of the presently specified 7-day determination of the cumulative time that these valves have been open.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

(1) The UFSAR [Updated Final Safety Analysis Report] does not assume a malfunction or failure of the containment purge system or any component thereof to be an initiating event in any accident analysis nor does it consider misoperation of the system to be an initiating event. The proposed changes will not alter or otherwise change these assumptions. Therefore, the proposed changes do not increase the probability of an accident previously evaluated.

(2) The UFSAR contains an evaluation of the radiological consequences of a postulated LOCA conservatively assuming that the 20 inch purge valves are open for 5 seconds (4 second isolation time plus 1 second for conservatism) following the onset of the accident. Although the proposed change could allow the HVP [High Volume Purge] valves to be open for a longer period of time than is allowed by the current TS, these proposed changes do not decrease the isolation time associated with the containment isolation valves nor violate the assumptions or results of this evaluation. Furthermore, the specified criteria will limit the use (hence the cumulative time) of the HVP to only those pre-approved uses. Therefore, the consequences of an accident previously evaluated are not increased.

(3) Therefore, the probability or consequences of previously evaluated accidents are not increased.

b. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

(1) The proposed changes will not require the addition, deletion or modification of any plant hardware and no new modes of plant operation or testing are introduced.

(2) The method by which any safety-related system performs its function will not be changed. In addition, the methods for verifying component or system operability will not change.

(3) Therefore, operating the plant with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. This change would not involve a significant reduction in the margin of safety.

(1) The proposed changes do not affect the methodology used in the offsite dose analysis nor the acceptance criteria associated with any accident analysis.

(2) The proposed changes do not affect the 4-second isolation time of the 20 inch containment purge valves.

(3) This change, therefore, will not involve a reduction in the margin of safety.

Based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 18, 1991

Description of amendment request: The proposed change to the Grand Gulf Nuclear Station (GGNS) Technical Specifications (TS) would delete the requirement to perform a daily surveillance verifying the measured recirculation system drive flow to be less than or equal to the established drive flow for a given flow control valve position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed change to the GGNS TS does not involve an increase in the probability or consequences of an accident previously evaluated because the proposed change only removes a requirement determined to be redundant to existing requirements and has no meaningful value from a safety point of view. With operable RPS [Reactor Protection System] instrumentation and periodic core flow calibration, the accuracy of the APRM-FBSTP [Average Power Range Monitor - Flow Biased Simulated Thermal Power] trip is assured. Deviations or trends away from established core-flow and drive-flow conditions will continue to be indicated by performance of the surveillances required under TS 3/4.4.1.2. In addition, the proposed change is expected to result in an unquantifiable decrease in the probability of previously evaluated accidents through the resulting reduction in control room operator burden.

b. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated because no new modes of operation or changes to plant design are involved. The scope of the proposed change is strictly limited to the deletion of the daily surveillance requirement specified by Note (h) which has been determined to involve no significant change to the protection afforded by existing surveillances.

c. This change would not involve a significant reduction in the margin of safety.

The proposed change does not involve a reduction in a margin of safety because the relationships (under TS 3.2.2) used to establish the APRM Flow-Biased Simulated Thermal Power-High scram and Flow-Biased Neutron Flux-Upscale control rod block trip setpoints will remain unchanged. The APRM-indicated recirculation loop drive flows will continue to be appropriately checked to ensure that their established relationship to total core is preserved or accounted for under other TS. All other OPERABILITY and Surveillance Requirements associated with the affected instrumentation remain unchanged. It should also be noted that the current redundancy of surveillance requirements does not reflect a margin of safety but rather a situation which, if carried to extremes, would constitute a serious safety concern.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: John T. Larkins

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: October 17, 1991

Description of amendment request: The proposed amendments would (1) include the required updating of the operating licenses with the standard license condition as stated in Generic Letter 86-10, Section F; (2) revise the Unit 1 and Unit 2 Technical Specifications to delete Sections 3/4.3.3.7, 3/4.7.11, 3/4.7.12, and 6.2.2.e; and (3) add Section 6.5.1.6.n to the Technical Specifications. The proposed amendments are also in accordance with the guidelines stated in Generic Letter 88-12.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are administrative in nature.

The proposed changes are in accordance with the guidelines of Generic Letter 88-12 which provide for the removal of the fire protection requirements from the Technical Specifications in four major areas: fire detection systems, fire suppression systems, fire barriers, and fire brigade staffing requirements. The existing administrative control requirements related to fire protection audits would be retained. Additional programmatic requirements have been retained or included in the administrative controls to address the Fire Protection Program equivalent to the requirements for other programs implemented by license condition.

(2) Use of the modified specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

The use of [these] modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed changes do not involve any physical alterations to the facility, any changes to setpoints, or any changes to the operating parameters.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed changes to the Operating Licenses and Technical Specifications are consistent with the guidelines of Generic [L]etter 88-12, are administrative in nature, and further the goal of Technical Specification improvement as delineated in other NRC policy statements. The proposed changes do not decrease the level of fire safety. The change[s] will provide administrative and operational controls on the fire protection program that are comparable to those for other programs implemented by license condition and also [assure] an equivalent level of protection.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 9, 1991

Description of amendment request: The proposed amendment would revise Technical Specification Sections 3.1.B.3 and 3.10.C.2 to establish additional requirements for the availability of Local Power Range Monitors (LPRM) associated with the Average Power Range Monitoring (APRM) system. These additional requirements will further restrict the allowable number of out of service LPRM/APRM detectors in order to ensure a sufficient response to regional thermal hydraulic oscillations in the reactor core to prevent violation of the Minimum Critical Power Ratio (MCPR) safety limit. The change request also identifies a lower bound MCPR operating limit for each cycle as identified in the Core Operating Limits Report (COLR). The limit shall be greater than or equal to 1.47.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear Corporation has determined that operation of Oyster Creek in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluted since the activity is within current design basis for the affected transient. Also the existing plant configuration and method of operation are not changed by this [Technical Specification Change Request] TSCR.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated since the activity previously described is of the same type previously considered (i.e., the potential for power oscillations). Also, the existing plant configuration and method of operation are not changed by this TSCR.

3. Involve a significant reduction in a margin of safety since neither the fuel integrity limits nor the procedural requirements for established limiting conditions for operation are exceeded. Also, the existing plant configuration and method of operation are not changed by this TSCR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: September 5, 1991

Description of amendment request: Amendment No. 147 to the TMI-1 Operating License was issued on December 13, 1988 to provide Technical Specifications (TSs) for the Reactor Coolant Inventory Tracking System (RCITS). At that time the NRC stipulated that the TS was effective only until the end of operating cycle No. 8 and that the GPU Nuclear Corporation must submit a revision to the TS at the end of the cycle consistent with the revised Standard TSs which were to be issued by the NRC in 1991. This Technical Specification Change Request (TSCR) is to comply with that stipulation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that this TSCR poses no significant hazards as defined in 10 CFR 50.92 in that operation of TMI-1 in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. Deleting the "note" in Technical Specification Section 3.24, which provides operability requirements only to the end of Cycle 8, does not involve any changes to the design of the RCITS System or applicable procedures. Since this is an administrative change permitting continued implementation of TS 3.24 during future operating cycles, it has no effect on the probability of occurrence or consequences of any accidents previously evaluated.

2. Create the possibility of a new or difficult kind of accident from any accident previously evaluated.

The administrative change requested herein does not modify the existing plant configuration, or existing procedures, nor create new ones. As such, this TSCR does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The administrative change requested herein does not affect the plant configuration, procedures or operation. RCITS is an information system which is intended to enhance the accident monitoring capability and does not reduce safety. As such, margin of safety is unaffected by this TSCR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: September 13, 1991

Description of amendment request: This request revises a previous amendment request dated February 15, 1991, which was noticed in the Federal Register on July 10, 1991 (56 FR 31435). This request makes miscellaneous administrative changes to the Technical Specifications (TS) including correction of typographical errors, deletion of obsolete references and clarifications to the language contained in the TS to achieve consistency between units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Analysis of Significant Hazards

Per 10 CFR 50.92, a proposed amendment will involve a significant hazards considerations if the proposed amendment does not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated,

(2) create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated, or

(3) involve a significant reduction in a margin of safety.

Criterion 1

The proposed changes are purely administrative and are intended to correct errors or problems in the [TS]. Therefore, we believe these changes do not involve a significant increase in the probability or consequences of a previously analyzed accident.

Criterion 2

Since the proposed changes are purely administrative and introduce no new operating conditions, we believe that these changes will not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

Criterion 3

For the reasons cited in Criterion 1 above, we believe that the proposed changes will not result in a significant reduction in the margin of safety.

Lastly, we note that the Commission has provided guidance concerning the determination of significant hazards by providing certain examples of amendments not likely to involve a significant hazards considerations. The first example is that of a purely administrative change to the [TS]; for example, a change to achieve consistency throughout the [TS], correction of an error, or change in nomenclature. We believe that the changes requested in this letter are of the type specified in this example, since they are intended to correct errors and problems in the [TS]. Therefore, we believe this change involves no significant hazards considerations as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: September 30, 1991

Description of amendment request: The proposed amendment would revise the Technical Specification Basis and Figures 3.4.2 and 3.4.3 that describe and show how the Adjusted Reference Temperature (ART) of vessel material is determined.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. These proposed changes do not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The pressure-temperature (P/T) limits are developed in accordance with the fracture toughness requirements of 10 CFR 50 Appendix G, as supplemented by ASME Code Section III, Appendix G. The Adjusted Reference Temperature (ART) used for the determination of the P/T limits is based on measurement results and the application of Regulatory Guide (R.G.) 1.99, Revision 2. Furthermore, the revised fluence and relationship for ART result in a small change in ART projections in the conservative direction (plus 4 degrees F).

This change is (a) equivalent to one cycle of operation, (b) well within uncertainty of ART (plus or minus 44 degrees F), and (c) considered insignificant. Use of the resulting P/T limits, in conjunction with the surveillance specimen program, ensures that the Reactor Coolant System (RCS) pressure boundary will behave in a non-brittle manner and that the probability of a rapidly propagating fracture is minimized. Therefore, the proposed Technical Specification changes do not significantly increase the probability of an accident previously evaluated. Furthermore, the revised P/T limits will not result in a significant change in the configuration or operation of the plant. Therefore, the proposed Technical Specification changes do not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The revised P/T limits were developed following the requirements of 10 CFR 50 Appendix G and the guidance provided in R.G. 1.99, Revision 2, as indicated in Item 1 above. Furthermore, the revised fluence and relationship for ART result in a small change in ART projections in the conservative direction (plus 4 degrees F). This change is (a) equivalent to one cycle of operation, (b) well within uncertainty of ART (plus or minus 44 degrees F), and (c) considered insignificant. Finally, the revised P/T limits will not result in a significant change in the configuration or operation of the plant. Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The revised P/T limits were developed following the requirements of 10 CFR 50 Appendix G and the guidance provided in R.G. 1.99, Revision 2, as indicated in Item 1 above. These requirements and guidance are established to assure an adequate margin of safety to brittle fracture is maintained during operation. Furthermore, the revised fluence and relationship for ART result in a small change in ART projections in the conservative direction (plus 4 degrees F). This change is (a) equivalent to one cycle of operation, (b) well within uncertainty of ART (plus or minus 44 degrees F), and (c) considered insignificant. Therefore, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

Maine Yankee has concluded that the proposed changes to Technical Specifications do not involve a significant hazards consideration as defined by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: October 7, 1991

Description of amendment request: The proposed amendment would change the surveillance frequency of ECCS pump-related instruments from monthly to quarterly. Although a previous amendment (No. 121, issued May 9, 1991 at 56 FR 13664) revised the surveillance interval for ECCS pumps from monthly to quarterly, the corresponding instruments were inadvertently left as monthly. The administrative change to Technical Specifications Table 4.1-2, items 13 through 18, will correct this oversight and provide consistency between ECCS pump and ECCS pump-related instrument surveillance testing. The change would replace the "M" (monthly) notation with a "Q (quarterly) notation for Table 4.1-2 items 13 through 18.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: The proposed administrative change to Technical Specification Table 4.1-2 has been evaluated against the standards of 10 CFR 50.92 and has been determined to not involve a significant hazards consideration. This proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. ECCS instrumentation has no automatic safety feature and ECCS pump instrument checks are not used in any FSAR Chapter 14 analyses. Thus the change will not affect current safety analyses. This change adjusts the periodicity of performing instrument checks and does not affect the calibration frequency of these instruments. The increase in periodicity slightly expands the interval between instrument checks, thus the probability of a problem occurring that

would be detected by the instrument check is negligibly increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. Increasing the ECCS pump instrument check periodicity does not create the possibility of a new or different kind of accident, because the change involves neither a hardware modification nor the creation of a unique operating condition.

3. Involve a significant reduction in a margin of safety. Increasing the ECCS pump instrument check periodicity does not change the results of any of the FSAR Chapter 14 (Safety Analysis) events. Checks of ECCS pump instrumentation operability are maintained and continued surveillance testing will ensure ECCS operational readiness criteria are maintained.

Based on the discussion above, it is concluded that there is reasonable assurance that operation of the Maine Yankee plant, consistent with the proposed Technical Specifications, will not impact the health and safety of the public.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 30, 1991

Description of amendment request: The proposed change primarily entails clarification of the terms "system" versus "subsystem" to ensure terminology consistency throughout the Cooper Nuclear Station (CNS) Technical Specifications. In addition, this proposed change clarifies the operability requirements for the Core Spray System and Low Pressure Coolant Injection (LPCI) System of the Residual Heat Removal (RHR) System during refueling operations.

These changes were identified during an NRC inspection as documented by NRC Inspection Report 86-27, dated December 30, 1986.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

During refueling outages, systems may be taken out of service for maintenance and/or upgrades. The proposed change to Section 3.10.F will ensure that in these instances, two redundant means remain available to flood and/or spray the core in the unlikely event that a loss of coolant inventory is experienced during refueling operations, and ensure that the Shutdown Cooling mode of the RHR System is also available. With two Core Spray subsystems inoperable, two LPCI subsystems exist to mitigate a coolant inventory loss event. In addition, with only one of two LPCI subsystems operable, and with only one of two Core Spray subsystems operable, two redundant means exist to mitigate the event. In both of these cases, at least one LPCI subsystem is required to be operable; therefore Shutdown Cooling is assured. Accordingly, the above combinations of inoperable subsystems ensure that means exist to mitigate a loss of coolant inventory event with consideration of a single failure, as well as provide Shutdown Cooling. On this basis, the proposed change to Section 3.10.F of the CNS Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes clarifying the usage of the terms "systems" and "subsystem" and the additional miscellaneous editorial changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes are administrative in nature, do not reflect any changes to the plant configuration or the plant safety analysis, and are proposed to provide clarification to station operators.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

The changes proposed to Section 3.10/F will not create the possibility for a new or different kind of accident. The changes proposed are consistent with the basis for the existing Technical Specifications regarding this requirement. The proposed changes provide only clarification of appropriate requirements in providing the desired protection against a loss of coolant inventory event while ensuring that the Shutdown Cooling mode of the RHR System is available during refueling operations while fuel is in the reactor vessel.

In addition, since the changes proposed to clarify use of the terms "system" and "subsystem" and the remaining editorial changes involve no hardware changes or new mode of plant operation, no possibility for a new or different kind of accident is created.

3. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

The proposed changes to the low pressure Core Standby Cooling System operability requirements during refueling operations do not constitute a significant reduction in the margin of safety. As stated above, the proposed changes provide only clarification of appropriate requirements in providing the desired protection against a loss of coolant inventory event during refueling operations, and will now ensure that the Shutdown Cooling mode of the RHR System is available during refueling operations while fuel is in the reactor vessel. This proposed change provides no less redundancy in backup low pressure injection systems in comparison to that currently specified in the Technical Specifications.

For the reasons stated above, the changes proposed to provide clarification of the terms "system" and "subsystem" and make the minor editorial changes do not affect the margin of safety. These changes merely clarify the description of the various systems, and do not change the CNS safety analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: June 28, 1991

Description of amendment request: The proposed amendment to the Technical Specifications would increase the maximum allowable setpoint drift for the main steam safety valve setpoints from 1% to +3% / -2%.

This amendment was initiated by Omaha Public Power District (OPPD) in response to LER 87-003 which resulted from safety valve setpoint drifts in excess of that allowed by Technical Specification 2.1.6(3). OPPD used the NRC-approved CESEC-III transient analysis code and analysis methods to determine the acceptable setpoint drift for the main steam safety valves. Acceptable setpoint drift is defined as the maximum allowable drift in the main steam safety valve setpoints which would ensure that the peak secondary pressure does not exceed the design basis acceptance criteria (i.e. 110% of design) of 1100 psia, as specified in the Updated Safety Analysis Report, Section 14.10. The wording in the Basis for Technical Specification 2.1.6 has

been revised and no longer contains the highest primary pressure calculated in the transient analyses. The revised wording specifies that the highest primary pressure reached in any of the accidents analyzed is less than 2750 psia, which is the Safety Limit for the Reactor Coolant System Pressure as specified in Technical Specification 1.2. Future transient analyses will continue to demonstrate that the highest reactor coolant system pressure is below 2750 psia, but a facility license change will no longer be necessary to update this value.

Based on past experience and review of the NRC approved OPPD reload licensing methodology, the loss of load and loss of feedwater flow events were found to be most limiting. The loss of feedwater flow event was analyzed as the most limiting transient for determining the maximum steam generator pressure. While the analysis was performed with Cycle 11 conditions, the results bound Cycle 13 as well.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment to the Technical Specification does not involve a significant hazards consideration because the operation of the Fort Calhoun Station in accordance with this change would not:

(1) Involve a significant increase in the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report. The proposed revision to the allowable setpoint drift was conservatively analyzed using the NRC approved transient analysis methodology and computer code (CESEC-III). The results demonstrate that during a severe transient the peak steam generator pressure would fall significantly below the Safety Limit and design basis acceptance criteria of 1100 psia, as specified in the Updated Safety Analysis Report Section 14.10. Since the main steam safety valves function to control transient events, revision of the allowable setpoint drift would not increase the probability of occurrence of such events. Therefore, this amendment would not increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report.

(2) Create the possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report. The safety valves function to control transient events. Analyses of the proposed allowable setpoint drift using the NRC approved transient analysis methodology and computer code (CESEC-III) demonstrates that during the limiting overpressure transient, peak steam generator pressure would be significantly below the design basis acceptance criteria of 1100 psia, as specified in the Updated Safety Analysis Report Section 14.10. No new or different kind of accident is created because actual operation of the plant remains unchanged. Therefore, the possibility of an accident or malfunction of a different type than any evaluated previously in the safety analysis report would not be created.

(3) Involve a significant reduction in the margin of safety as defined in the basis of any Technical Specification. This revision only increases the allowable main steam safety valve setpoint drift within design limits as demonstrated using the NRC approved transient analysis methodology and computer code (CESEC-III). Therefore, the margin of safety as defined in the basis for any Technical Specification is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036

NRC Project Director: John T. Larkins

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 11, 1991

Description of amendment request: The licensee requests an amendment to the Technical Specifications to delete information which is no longer applicable to the facility as a result of completing the spent fuel pool rerack modification. The requested amendment also corrects a typographical error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed changes do not involve an increase in the probability of a previously-analyzed accident. The proposed changes are administrative in nature. The changes do not affect the current plant configuration or current plant operations. The proposed changes only delete information which is no longer applicable to IP3 and correct a typographical error.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed changes do not involve a change in the current plant configuration or current plant operations.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment does not involve a significant reduction in a margin of safety. The deletion of information no longer applicable to IP3 does not reduce a margin of safety since it will not affect the current plant configuration or current plant operations. The correction of the typographical error merely corrects the technical specification bases and therefore does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: October 11, 1991

Description of amendment request: The proposed amendment reduces the Residual Heat Removal (RHR) pump flow rate surveillance acceptance criteria in Technical Specification 4.5.F.1. from the present 9900 gpm to 8910 gpm. The proposed change would allow more accurate and repeatable inservice testing by eliminating problems inherent in testing the pumps near runout flow conditions. Furthermore, this change would ensure consistency between pump test requirements for all modes of operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The LPCI mode of the RHR system is designed to mitigate the consequences of analyzed accidents and is normally in the standby mode. This system cannot initiate accidents and the proposed change has no effect on the probability of occurrence of previously evaluated accidents.

The effect of a reduction of the RHR pump flow rates has been fully analyzed. These analyses demonstrate that the consequences of postulated accidents remains well within the acceptable limits established in the FitzPatrick Final Safety Analysis Report (FSAR) and applicable NRC regulations. The 88° F expected increase in peak clad temperature (PCT) is not significant with respect to the existing 600° F margin to the 2200° F acceptance criteria.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not require any modifications to any plant structures, systems, or components. This change cannot initiate or contribute to any new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The effect of a 10% reduction in the RHR pump flow rate has been fully analyzed, with the result that the effect on all design considerations has been shown to be acceptable. Although the calculated fuel PCT has increased by 88° F, this is not significant with respect to the 600° F margin to the ECCS acceptance criteria of 2200° F.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: October 11, 1991

Description of amendment request: This proposed amendment would provide for a reduction of the maximum outlet and minimum average temperatures of the, Pre-Stressed Concrete Reactor Vessel (PCRV) liner cooling water to 105° F and 85° F respectively.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Public Service Company of Colorado (PSC) has submitted a no significant hazards consideration analysis in accordance with the requirements of 10 CFR 50.91 and 50.92. PSC evaluated the impact of the proposed changes in three different areas related to previously analysed accidents; (1) shutdown margin, (2) brittle fracture prevention for the PCRV liner, and (3) stress levels in PCRV liner and concrete. Based upon this analysis, the licensee reached the following conclusions:

Reduction of the minimum average PCRV cooling water temperature from 100 to 85° F will not impact nuclear safety at FSV. The assumption regarding minimum average fuel temperature in the shutdown margin assessment remains valid. At an average temperature of 85° F, the PCRV top head liner and weldment materials are above their calculated end-of-life fracture transition elastic temperatures, so brittle fracture is not a credible failure mode. PCRV liner and concrete stresses will not increase when temperatures equilibrate with the minimum average PCRV cooling water temperature at 85° F. Even if it is conservatively assumed that PCRV and Core Support Floor (CSF) liner average temperatures decrease instantaneously from 100 to 85° F, resulting stresses are within allowable limits.

The maximum outlet water temperature limit of 105° F maintains the existing 20° F limit on the difference between the maximum outlet cooling water temperature and the minimum average of the inlet and outlet cooling water temperatures. No changes are proposed to the remaining restrictions for PCRV cooling water, including the maximum permissible difference between the PCRV liner cooling water inlet and outlet temperatures, the maximum rate of change of PCRV concrete temperature, and the maximum permissible difference between the PCRV cooling water outlet temperature and the PCRV external concrete surface temperature.

Based on the above evaluation, PSC concludes that operation of Fort St. Vrain in accordance with the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and based on its review proposes to determine that the proposed changes do not involve a significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado 80631

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Seymour H. Weiss

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: September 4, 1991

Description of amendment request: The proposed amendment would make changes to Seabrook Station Technical Specifications implementing the guidance of NRC Generic Letter 88-16 "Removal of Cycle-Specific Parameter Limits From Technical Specifications." The proposed Technical Specification changes involve the relocation of several cycle-specific parameter limits from the Technical Specifications to a new NHY report entitled the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of cycle-specific parameter limits from the Seabrook Station Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The cycle-specific parameter limits, although not in

Technical Specifications, will be followed in the operation of Seabrook Station. The proposed Technical Specification changes do not affect the actions which must be taken if the cycle-specific parameter limits are exceeded nor do they affect the surveillance requirements associated with these limits.

Future core reload designs will be supported by a 10 CFR 50.59 evaluation which will examine each accident analysis addressed in the Updated Final Safety Analysis Report (FSAR) with respect to changes in cycle-specific parameter limits to ensure that the reload design is bounded by previously accepted analyses. This examination, which will be performed per the requirements of 10 CFR 50.59, ensures that future core reload designs will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the removal of the cycle specific parameter limits has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operations will be altered as a result of this proposed change. The cycle-specific parameter limits are calculated using the NRC-approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The proposed Technical Specifications will require operation within the cycle-specific parameter limits. The proposed Technical Specification changes do not affect the actions which must be taken if the cycle-specific parameter limits are exceeded nor do they affect the surveillance requirements associated with these limits.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed amendment does not result in a significant reduction in the margin of safety.

The margin of safety is not affected by the removal of cycle-specific parameter limits from the Technical Specifications. The margin of safety provided by current Technical Specifications remains unchanged. Surveillance requirements exist to monitor the values of these cycle-specific parameter limits. The proposed Technical Specification changes require operation within the cycle-specific parameter limits which are determined using NRC-approved reload design methodologies.

The development of the cycle-specific parameter limits for future reload designs will continue to utilize only those methods described in NRC-approved documentation and identified in proposed Technical Specification Section 6.8.1.6. In addition, each future reload design will involve a 10 CFR 50.59 safety evaluation to assure that operation of the unit within the cycle-specific parameter limits will not involve a significant reduction in a margin of safety.

Therefore, the proposed changes are administrative in nature and do not impact the operation of the Seabrook Station in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 10, 1991

Description of amendment request: This amendment application proposes changes to Technical Specification (TS) 3/4.4.6, "Pressure/Temperature Limits", and its associated Bases in accordance with the guidance contained in Generic Letter 91-01, "Removal of the Schedule for Withdrawal of Reactor Vessel Material Specimens from Technical Specifications." Specifically, Table 4.4.6.1.3-1, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule", is being removed, and references to the table in TS 3/4.4.6 and the associated Bases are being deleted. In addition to the Generic Letter 91-01 endorsed changes, an additional change to the Bases for TS 3/4.4.6 is being proposed to correct an editorial error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the requirements of 10 CFR 50.91 and using the criteria of 10 CFR 50.92, a significant hazards consideration analysis has been completed for the proposed changes to the Hope Creek Generating Station Technical Specifications. As a result of this analysis, it has been concluded that the proposed changes:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes remove an unnecessary and redundant requirement from the TSs and correct an editorial error in the TS Bases. These changes are purely administrative in nature. No changes to the vessel material surveillance program would be permitted as a result of these changes. The surveillance program would continue to be implemented in accordance with applicable regulations (10 CFR 50 Appendix H) and regulatory control of the program would be maintained. The changes would in no way impact or alter the configuration or operation of the facility and would not affect any accident initiators or accident analysis assumptions. As a result, the proposed change would not significantly increase the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are purely administrative in nature. The changes would allow regulatory control over the vessel material surveillance program to be maintained in accordance with the requirements of 10 CFR 50 Appendix H. The changes would in no way impact or alter the configuration or operation of the facility and no new modes of plant operation would be created. As a result, the proposed change would not create the possibility of a new or different kind [of] accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

Removal of the redundant TS requirements and correction of the editorial error in the TS Bases are considered administrative changes. These changes would not affect the material surveillance program and regulatory control over the program would be maintained through the requirements of 10 CFR 50 Appendix H. The changes would in no way impact or alter the configuration or operation of the facility and would not affect any TS or safety limit. As a result, the proposed change would not significantly reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 17, 1991

Description of amendment request: This amendment request would revise the Explosive Gas Mixture and the Radioactive Gaseous and Liquid

Effluent Monitoring Instrumentation sections in the Technical Specifications (TS). Specifically, the licensee requests that TS 3.11.2.6, ACTION b, be revised to agree with the corresponding ACTION b of TS 3.3.7.11 and ACTION 124 of Table 3.3.7.11-1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a physical or procedural change to any structure, component or system that significantly affects the probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed change will bring the affected TS into agreement with other similar specifications and is essentially administrative in nature.

The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

There are no physical changes to the plant or to the manner in which the plant is operated involved in the proposed revision. Therefore, no new or different accident is created by the proposed change.

The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

This change is administrative in nature. The proposed wording change was previously reviewed and approved by the NRC staff in Amendment 2 to the FOL. As described in the Safety Evaluation supporting that amendment, the proposed wording is consistent with the intent of, and follows closely the staff's revised Radiological Environmental Technical Specifications (RETS) guidance provided in NUREG 0473, Revision 2. We, therefore, have determined that there is no significant reduction in any margin of safety involved in this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 17, 1991

Description of amendment request: This amendment request would revise Section 3/4.2.3, MINIMUM CRITICAL POWER RATIO of the Technical Specifications. Specifically, the licensee requests that the constants in the equation for tau_B be changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will result in a more conservative operating limit MCPR. It will not involve any physical change in plant equipment or in the way that the plant is operated and will, therefore, not increase the probability of any accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (USFAR). Should the calculated value for tau ever become positive, the proposed change in constants will impose a more conservative limit on MCPR than the current TS limits - which would tend to decrease the consequences of any accident or malfunction of equipment important to safety.

2. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

There are no physical changes to the plant or to the manner in which the plant is operated involved in the proposed revision. The proposed change will introduce more conservatism into operating limit MCPR values and in no way creates the potential for any new or different accident.

3. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

Since all the tau values are negative using either the existing or proposed more conservative constants for calculating tau_B for all cycles affected by the new constants, the operating limit Minimum Critical Power Ratio was not impacted during past operation nor for the present cycle. Therefore, the proposed change did not identify any decrease in any margin of safety for past operation and has the potential for increasing the safety margin on operating limit MCPR for future plant operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 17, 1991

Description of amendment request: This amendment request proposes to revise the accident monitoring instrumentation section in the Technical Specifications. Specifically, the licensee requests that Table 3.3.7.5-1, Accident Monitoring Instrumentation, be revised to reduce the MINIMUM CHANNELS OPERABLE requirement of Suppression Pool Water Temperature Instruments from two (2) to one (1), and to remove ACTION 80 for that instrumentation, leaving the (a) notation and associated footnote. The change would also modify the (a) footnote to state that "Suppression chamber water temperature instrumentation must satisfy the availability requirements of Specification 3.6.2.1, ACTION c. and d." The licensee also proposes to remove footnote (c).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PSE&G has, pursuant to 10 CFR 50.92, reviewed the proposed amendment to determine whether our request involves a significant hazards consideration. We have determined that:

1. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a physical or procedural change to any structure, component or system that significantly affects the probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety

Analysis Report (UFSAR). The proposed change will, in agreement with the GE Standard TS and HCGS TS 3.6.2.1, ACTION c., provide a reasonable period of time in which to restore the inoperable channel to OPERABLE status while continuing to monitor average bulk temperature. This proposed revision will not affect the probability of the occurrence of any accident and, since this proposed revision will not significantly degrade suppression pool temperature monitoring capabilities, there is no increase in the consequences of any accident or malfunction of equipment important to safety previously evaluated.

2. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

There are no physical changes to the plant or to the manner in which the plant is operated involved in the proposed revision. Therefore, no new or different accident is created by the proposed change.

3. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The proposed revision will, by making all affected TS agree, clarify the specifications for the plant operators. Since alternate methods are available to determine suppression pool temperature and are permitted by TS 3.6.2.1, ACTION c, with one average bulk temperature channel inoperable, this change can be made with no significant resultant change in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: December 7, 1990, as supplemented June 11, 1991, and August 26 1991

Description of amendment request: South Carolina Electric & Gas Company (SCE&G) proposes to revise Technical Specification (TS) 6.4, Training, to reflect that its training programs meet the requirements of American National Standards Institute (ANSI) Standard 3.1, Section 5.5.2, 1981, for non-licensed staff, and 10 CFR 55.59(c) and 55.31(a)(4) for licensed staff. The original submittal was noticed on May 15, 1991 (56 FR 22477).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

SCE&G has determined that no significant hazards consideration is justified and that should this request be implemented it will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated because no plant equipment has been changed. This amendment is an administrative change involving the clarification on the scope of the training and qualification programs, corrects the reference to ANSI 3.1, and incorporates the revised regulation in 10 CFR [Part] 55.

2. Create the possibility of a new or different kind of accident from any previously evaluated because the proposed amendment is administrative in nature. No physical plant configuration, setpoint, or operation changes are proposed.

3. Involve a significant reduction in a margin of safety because this amendment is administrative in nature and does not affect any TS margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: December 14, 1990; and supplemented October 15, 1991 (TS 90-22)

Description of amendment request: The proposed amendment would change the title of the facility staff member, indicated in Technical Specification 6.2.2.f, who must hold a Senior Operators License from the Operations Manager to the Operations Superintendent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

Operation of the plant in accordance with the proposed amendment will not:

(1)Involve a significant increase in the probability or consequences of an accident previously evaluated.

As explained in the December 14, 1990 submittal, the proposed change was considered administrative in nature. However, the NRC staff determined that the duties and responsibilities of the Operations Manager, as described in the Final Safety Analysis Report (FSAR) and in the Organizational Topical Report, closely matched the duties and responsibilities of the individual described in ANSI Standard N18.1-1971 who must possess a senior reactor operator's (SRO) license. Therefore, the proposed change to the technical specifications was denied.

By letter dated October 15, 1991, Sequoyah proposed a revised description of the Operations Manager's duties and responsibilities such that the wording more closely matches the actual duties and responsibilities of the position, duties and responsibilities that are not intended to require an SRO license. The Sequoyah staff management position which will require an SRO license would then become the Operations Superintendent, who is described as the individual responsible for day-to-day plant operations and the individual to whom the shift operations supervisors report.

Since the proposed change to the Technical Specifications does not result in a decrease in the level of authority or qualifications required for the management of the Operations Department, the proposed amendment will have no effect on the probability or consequences of an accident previously analyzed in the FSAR.

(2)Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not result in a decrease in the level of authority or qualifications required for the management of the Operations Department. The requirement that the individual who performs the day-to-day management of facility operations must possess an active SRO license is unchanged. Therefore, orders to the licensed operators continue to be transmitted by SRO-licensed personnel (which satisfies the ANSI standard) and the proposed change to the technical specifications will not create the

possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety.

Orders given to the licensed operators from Sequoyah staff management are transmitted by an SRO-licensed individual, the Operations Superintendent. Since the level of authority or qualifications of the individual performing this function is not changed by the proposed amendment, there is no reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: September 23, 1991

Description of amendment request: The requested amendment would revise Technical Specification (TS) 3.1.3.3 "Control Rod Scram Accumulators," to allow an alternate method for verifying that a control rod drive (CRD) pump is operating. Such verification is required with more than one control rod scram accumulator inoperable. The current Perry Unit 1 TSs require that at least one control rod be inserted at least one notch as a verification that a CRD pump is running. The proposed change would allow alternate verification that a CRD pump is running by direct indication of the control rod charging water header pressure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed Action Statement ensures the intent of the current Action Statement remains unchanged. The proposed change simply provides an alternate method for verifying operation of a control rod drive pump. This check provides an equivalent method of verifying that the inoperable control rod accumulators were not caused by a control rod drive pump trip. The operation of the control rod drive pump is verified to ensure that additional accumulators will not become inoperable due to the loss of a CRD pump, and thus they remain capable of shutting down the reactor via the scram function. Thus, the validity of the results of the transient and accident analyses is assured since the assumed reactivity insertion rate is not changed. Additionally, the maximum allowable number of inoperable accumulators and control rods is not changed. Also, the actions to be taken in the event that a control rod drive pump is not operating remain unchanged.

2. This proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. Neither the mechanism for initiating nor for carrying out a scram is modified by this proposed change. The proposed change does not create a means by which the scram function could be impeded or prevented. The proposed change is functionally equivalent to the current Specification, merely providing an alternate method of determining whether a control rod drive pump is operating.

3. The proposed change does not involve a significant reduction in a margin of safety. The operability of the accumulators and the scram function of the control rod drive system protects the Safety Limit Minimum Critical Power Ratio as well as the 1% cladding plastic strain fuel design limit. The proposed change does not reduce a margin of safety as defined in the Bases of the Technical Specifications, since the proposed change does not affect the maximum allowable scram times for control rods, nor does it change the maximum allowable number or minimum separation of inoperable control rods. The proposed change does not modify any of the instrument setpoints or functions. The proposed change will either maintain the present margins of safety or increase them, by reducing the need for unnecessary challenges to the reactor protection system and resulting plant shutdowns, while still maintaining the capability to complete a reactor scram.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon.

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: October 1, 1991

Brief description of amendment request: The proposed amendment would revise the acceptance criteria provided in the Technical Specifications for the ECCS pump flow balance test.

Date of individual notice in **Federal Register:** October 9, 1991 (56 FR 50956); as corrected on October 17, 1991 (56 FR 52080)

Expiration date of individual notice: November 8, 1991

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in

connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: August 27, 1991

Brief description of amendments: The amendments revise the Technical Specification (TS) 4.4.9.3.1 for both units. The revision deletes the designation of the power operated relief valves (PORVs) as Category C valves for the American Society of Mechanical Engineers (ASME) Code, Section XI, Inservice Testing (IST) Program requirements. The surveillance requirements of TS 4.4.9.3.1 are retained and the PORVs are required to be tested in accordance with the currently-approved IST Program pursuant to Technical Specification 4.0.5.

Date of issuance: October 21, 1991

Effective date: October 21, 1991

Amendment Nos.: 162 and 142

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47230) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 21, 1991.

No significant hazards consideration comments received: No

Local Public Documer.t Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 5, 1991, as supplemented on September 26, 1991.

Brief description of amendments: The amendments allow the removal of the dedicated Class 1E emergency diesel generator (EDG) from a shutdown unit and allow its realignment to the operating unit for a period of up to 7 days. This is necessary to meet the technical specification (TS) requirement that two Class 1E emergency power sources be available for an operating unit and will allow the removal of the shared Class 1E No. 12 EDG to permit the performance of its required inspections and maintenance.

Specifically, the changes modify TS Sections 3.8.1.2, "ELECTRICAL POWER SYSTEMS - SHUTDOWN", and 3.8.2.2, "A.C. DISTRIBUTION - SHUTDOWN", for both units. The TS changes provide for a special test exception from the present requirement for an operable Class 1E EDG on the shutdown unit (Modes 5 and 6). The change also specifies the compensatory measures and actions required to be taken for the shutdown unit, including the availability of a temporary diesel generator, during the unavailability of a dedicated Class 1E EDG. The TS Bases are also modified to support the changes.

*Date of issuance:*October 21, 1991

*Effective date:*October 21, 1991

*Amendment Nos.:*163 and 143

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 12, 1991 (56 FR 46450)

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 21, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: January 15, 1991

Brief Description of amendments: The amendments revise numerous Technical Specifications in support of the realignment of some of Carolina Power & Light Company's (CP&L's) organizational structure. CP&L has created a Nuclear Assessment Department (NAD) to assume the functions and responsibilities for (1) administering CP&L's independent review program for nuclear facilities that was provided by the Corporate Nuclear Safety Section (CNSS), and (2) the auditing of the unit activity formerly provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department.

Date of issuance: October 22, 1991

Effective date: October 22, 1991

Amendment Nos.: 156 and 187

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9375) The September 30, 1991, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 22, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 1, 1991, supplemented by letters dated September 13 and October 17, 1991

Brief description of amendments: The amendment will incorporate changes into the Technical Specifications to meet the requirements of Generic Letter 88-01 regarding Intergranular Stress Corrosion Cracking.

Date of issuance: October 24, 1991

Effective date: October 24, 1991

Amendment Nos.: 80 and 64

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27038) The information provided in the September 13 and October 17, 1991 letters were not outside the scope of the June 12, 1991, notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: July 2, 1991

Brief description of amendment: The amendment revises Technical Specification (TS) Section 3.7.1.3, "Auxiliary Feedwater Supply" and its associated Bases Section to increase the demineralized water storage tank minimum volume from the present 50,000 gallons to a new minimum volume of 70,000 gallons. Approval of this TS provides an interim resolution to the seismic and tornado issue for the auxiliary feedwater supply system. Final resolution will be tied to the construction of a new non-Category 1 condensate storage tank, which will supply normal hotwell condensate makeup so that the existing non-QA, non-seismic condensate lines can be removed from the existing QA DWST.

Date of Issuance: October 28, 1991

Effective date: October 28, 1991

Amendment No.: 144

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37579) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 28, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 7, 1991, as supplemented August 2, 1991.

Brief description of amendment: The amendment revises Technical Specification Section 3.1.A.1 (Reactor Coolant Pump), Section 3.1.A.4 (Overpressure Protection System), Section 3.1.B (Heatup and Cooldown), Section 3.1.C (Minimum Conditions for Criticality), Section 3.2.D (CVCS), Section 3.3.A.3 (Safety Injection), and Section 4.3 (Reactor Coolant System Integrity Testing). These changes incorporate revised pressure-temperature limits and Overpressure Protection System (OPS) parameters in accordance with the methodology of Regulatory Guide (RG) 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Material," to predict the effect of neutron radiation on reactor vessel materials. Also, Section 3.1.C is being revised to replace pressure-temperature requirements on the reactor coolant system when the reactor is critical, with a fixed temperature limit.

Date of issuance: October 21, 1991

Effective date: October 21, 1991

Amendment No.: 155

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13661) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 8, 1991, as supplemented October 2, 1991

Brief description of amendments: The amendments revise the visual inspection requirements for snubbers in Technical Specification 4.7.8 in response to the guidance provided in the NRC's Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Date of issuance: October 29, 1991

Effective date: October 29, 1991

Amendment Nos.: 126 & 108

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43807) The October 2, 1991, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: August 22, 1991

Brief description of amendments: The amendments make line-item improvements to the St. Lucie, Unit 1 and Unit 2 Technical Specifications in accordance with Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Date of Issuance: October 22, 1991

Effective Date: October 22, 1991

Amendment Nos.: 110, 51

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47236) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 22, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 30, 1990, as supplemented by letter dated September 25, 1991

Brief description of amendments: The amendments replaced Technical Specification 3/4.6.2.2 "Spray Additive System" with a new specification entitled "Recirculation Fluid pH Control System" to be consistent with a plant modification that would eliminate the containment spray additive system for Unit 2. The Technical Specification regarding the Spray Additive System has been identified as 3/4.6.2.4 and is applicable to Unit 1 only.

Date of issuance: October 24, 1991

Effective date: October 24, 1991

Amendment Nos.: Amendment Nos. 30 and 21

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1991 (56 FR 47971) The September 25, 1991, submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: July 10, 1990

Brief description of amendment: The requested change would modify Technical Specification 3.9, "Operational Safety Instrumentation, Control Systems, and Accident Monitoring Systems," Table 3.9-2. Specifically, the Engineered Safety Features (ESF) bypass pressure specification limit is increased to 1760 psig from 1685 psig. This will restore the necessary 100 psid differential between reactor pressure and the safety injection actuation signal (SIAS) setpoint to avoid inadvertent safety injection events during normal reactor plant cooldowns.

Date of issuance: October 23, 1991

Effective date: October 23, 1991

Amendment No.: 123

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1991 (55 FR 34373) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 5, 1991

Brief description of amendment: Amendment revised Technical Specification 4.6.H to incorporate snubber population as a factor in determining the time interval between visual inspection of snubbers.

Date of issuance: October 31, 1991

Effective date: October 31, 1991

Amendment No.: 148

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43810) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: July 27, 1988, as supplemented May 21, 1991.

Brief description of amendment: This amendment extends the expiration date of the facility operating license from April 11, 2005, to August 22, 2009. This extension provides an effective operating license term of 40 years from the beginning of plant operation rather than 40 years from the issuance of the construction permit.

*Date of issuance:*October 22, 1991

Effective date:October 22, 1991

Amendment No.:126

Facility Operating License No. DPR-63: Amendment revises section 2.E of Facility Operating License No. DPR-63.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27047) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1991. The Commission has also issued an Environmental Assessment dated August 7, 1991, and a Notice of Issuance of Environmental Assessment and Finding of No Significant Impact related to this action (56 FR 40645).

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: June 28, 1991

Brief description of amendment: The amendment changed the Fort Calhoun Station, Unit 1, Technical Specification 3.5(7) to adopt the guidance of NRC Regulatory Guide 1.35, Revision 3, July 1990, for the maintenance of the Containment Tendon Prestressing System Surveillance Program.

Date of issuance: October 31, 1991

Effective date: October 31, 1991

Amendment No.: 139

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37587) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 18, 1991 and May 3, 1991 (reference License Amendment Request LAR 91-02)

Brief description of amendments: These amendments revised the combined Technical Specifications for the Diablo Canyon Power Plant Unit Nos. 1 and 2 by changing TS 3/4.7.7.1, "Snubbers," and the associated Bases to make the snubber visual inspection intervals and corrective actions conform to the recommendations of Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Date of issuance: September 6, 1991

Effective date: September 6, 1991

Amendment Nos.: 66 and 65

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22471) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 27, 1991

Brief description of amendments: The amendments added a new Section 3/4 7-8 to the Technical Specifications which added operability requirements, Limiting Conditions for Operation and Surveillance Requirements for the main turbine bypass system.

Date of issuance: October 24, 1991

Effective date: October 24, 1991

Amendment Nos. 52 and 16

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47241) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 18, 1976 and supplemented April 19, 1984, October 10, 1986, April 21 and June 23, 1988 and May 17, 1991.

Brief description of amendments: Appendix J of 10 CFR Part 50, Section III, Primary Reactor Containment Leakage Testing

Date of issuance: October 23, 1991

Effective date: October 23, 1991

Amendments Nos.: 164 and 167

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47242) The staff has found a portion of the requested changes, related to testing certain valves, may create confusion and are therefore unacceptable and has issued a Notice of Denial. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 23, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: March 28, 1991

Brief description of amendment: Revisions to TS Tables 3.14-1 and 3.14-2 to include requirements on the smoke detector and hose stations installed in the new intake structure building. Also, miscellaneous corrections to TS Table 3.14-1 and re-pagination of Section 3.14 pages.

Date of issuance: October 21, 1991

Effective date: October 21, 1991

Amendment No.:110

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR2 4216) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 9, 1991

Brief description of amendment: The amendment revises Table 3.2-7, "Instrumentation That Initiates Recirculation Pump Trip," and Table 4.2-7, "Minimum Test and Calibration Frequency For Recirculation Pump Trip," to reflect a modification to the Reactor Water Recirculation Pump Trip (RPT) system logic. The logic for the system was changed as part of the modifications required by 10 CFR 50.62, "Requirements for Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants."

Date of issuance: October 29, 1991

Effective date: October 29, 1991

*Amendment No.:*172

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** August 21, 1991 (56 FR 41585) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of Oswego, Oswego, New York 13126.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: June 3, 1991

Brief description of amendment: The amendment relocates the procedural details of the Radiological Effluent Technical Specifications to the Offsite Dose Calculation Manual and relocates the procedural details for solid radioactive wastes to the Process Control Program. This request is in accordance with Generic Letter 89-01.

Date of issuance: October 29, 1991

Effective date: October 29, 1991

Amendment No.: 104

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 26, 1991 (56 FR 29200) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: November 16, 1990

Brief description of amendment: The amendment changes the Technical Specifications to allow Zirlo clad fuel assemblies and Zirlo filler rods to be installed in the core.

Date of issuance: October 22, 1991.

Effective date: October 22, 1991.

Amendment No.: 105

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (56 FR 53076) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: May 24, 1991; Supplemented August 23, 1991 (TS 91-08 and 91-11).

Brief description of amendment: The change replaces certain cycle-specific parameter limit values in the Technical Specifications with a reference to a Core Operating Limits Report, in accordance with Generic Letter 88-16. In addition, changes to the Bases sections are also incorporated.

Date of issuance: October 23, 1991

Effective date: October 23, 1991

Amendment No.: 155

Facility Operating License No. DPR-77 Amendment revises the technical specifications.

Date of initial notice in **Federal Register:** July 10, 1991 - 56 FR 31443 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 1991.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: March 18, 1991

Brief description of amendment: The amendment revised Technical Specification (TS) 3.0.3, 3.0.5 Limiting Conditions for Operation, and corresponding Bases Section 3.0.3, to increase the time interval allowed for reaching Hot Standby once TS 3.0.3 and 3.0.5 have been entered. The changes are consistent with the guidance of Babcock and Wilcox Standard TSs for Pressurized Water Reactors, NUREG-0103, Rev. 4, and model TSs included in Generic Letter 87-09.

Date of issuance: October 21, 1991

Effective date: October 21, 1991

Amendment No. 163

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37591) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 15, 1991

Brief description of amendment: The amendment revised Technical Specification TS 3/4.7.1.3 and its bases to delete the reference to the deaerator storage tanks as condensate storage facilities for the auxiliary feedwater system.

Date of issuance: October 21, 1991

Effective date: October 21, 1991

Amendment No. 164

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24219) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 1, 1989, as supplemented February 1, 1990.

Brief description of amendment: The amendment revised TS 3/4.4.10, Structural Integrity, Section 4.4.10.1.b, Surveillance Requirements, by changing the surveillance interval for inspection and operability testing of reactor vessel internals vent valves from 18 months to 24 months. The change is consistent with Amendment Number 108, dated September 26, 1988, issued by the NRC to Florida Power Corporation's Crystal River, Unit 3.

Date of issuance: October 24, 1991

Effective date: October 24, 1991

Amendment No. 165

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 21, 1990 (56 FR 6121) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 31, 1991 supplemented August 29, and October 15, 1991.

Brief description of amendment: The amendment allowed the replacement of defective fuel rods with stainless steel filler rods.

Date of issuance: October 29, 1991

Effective date: October 29, 1991

Amendment No. 166

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 26, 1991 (56 FR 29282) Following the supplemental letter of August 29, 1991, which reduced the scope of the May 31, 1991 request, the application was renoticed on September 25, 1991 (56 FR 48591). The supplemental letter of October 15, 1991 provided additional information on fuel pin replacement and did not change the request or affect the staff's notice of the request.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: June 28, 1991

Brief description of amendment: The amendment changes Technical Specifications Sections 4.4.8.3.2 (a and b) and 4.5.2.d to delete surveillance testing requirements associated with the autoclosure interlock (ACI) feature for the residual heat removal suction isolation valves. This change allows implementation of plant modifications to delete the ACI feature from these valves.

Date of Issuance: October 18, 1991
Effective date: October 18, 1991, to be implemented within 60 days
Amendment No.: Amendment No. 4
Facility Operating License No. NPF-87. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47243) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room Location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: August 9, 1991
Brief description of amendment: The amendment revises the Comanche Peak Steam Electric Station, Unit 1, Technical Specifications to increase the required minimum shutdown margin for operational Mode 5 for Cycle 2 operation.
Date of Issuance: October 18, 1991
Effective date: October 18, 1991, to be implemented withn 30 days
Amendment No.: Amendment No. 5
Facility Operating License No. NPF-87. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47244) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room Location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: May 24, 1991, as supplemented by letters dated July 30, 1991, September 23, 1991, and October 21, 1991.
Brief description of amendment: The amendment replaces the radial peaking factor (Fxy) surveillance with a heat flux hot channel factor surveillance, revising the Technical Specifications (TS) to allow operation with a positive moderator temperature coefficient and implements Generic Letter 88-16, which allows the removal of cycle-specific parameter limits from the TS with a reference to a Core Operating Limits Report for the values of those limits.
Date of Issuance: October 24, 1991
Effective date: October 24, 1991, to be implemented within 60 days of issuance
Amendment No.: Amendment No. 6
Facility Operating License No. NPF-87. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47242) The July 30, 1991, September 23, 1991, and October 21, 1991, submittals provided additional clarifying information and did not change the initial no significant hazards consideration determination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room Location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 15, May 16 and July 21, 1991
Brief description of amendment: Eliminates the Technical Specification requirements for the Toxic Gas Monitoring System.
Date of issuance: October 24, 1991
Effective date: October 24, 1991
Amendment No. 132
Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register: February 6, 1991 (56 FR 4873)** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1991
No significant hazards consideration comments received: No
Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: December 12, 1988 (G02-88-264)
Brief description of amendment: The amendment modifies the Radioactive Gaseous Effluent Monitoring Instrumentation Table 3.3.7.12-1 of the technical specifications to allow operation of the main condenser off-gas treatment system without the associated action statement when one of the two redundant hydrogen monitors is inoperable.
Date of issuance: September 18, 1991
Effective date: September 18, 1991
Amendment No.: 95
Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 21, 1990 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1991.
No significant hazards consideration comments requested: No.
Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Dated at Rockville, Maryland, this 5th day of November 1991.

For the Nuclear Regulatory Commission
Bruce A. Boger,
Director, Division of Reactor Projects - III/IV/V Office of Nuclear Reactor Regulation

[Doc. 91-27106 Filed 11-12-91; 8:45 am]
BILLING CODE 7590-01-D

POSTAL SERVICE

Adjustment of Preferred Rates

AGENCY: Postal Service.

ACTION: Notice of adjustment of preferred rates.

Following the enactment of the Postal Service Appropriations Act for Fiscal Year 1992 on October 28, 1991, the Postal Service has determined that, pursuant to Resolution No. 91-4 of the Governors of the United States Postal Service, 56 FR 55700 (October 29, 1991), the following adjustments to the preferred rates for non-letter size bulk third-class nonprofit mail shall take effect at 12:01 am on November 17, 1991.

RATE SCHEDULE 302 (CONTINUED)

Third-Class Mail Nonprofit Bulk [1]

Non-Letters size	Piece rate (cents)	Pound rate (cents)
Piece Rate [6]:	14.6	
Discounts (Per Piece)		
Destination Entry:		
BMC	1.2	
SCF	1.7	
Delivery Office [2]	2.2	
Presort Level:		
3- and 5-Digit	1.4	
Carrier Route	4.5	
Saturation	5.2	

RATE SCHEDULE 302 (CONTINUED)—Continued

Third-Class Mail Nonprofit Bulk [1]

Non-Letters size	Piece rate (cents)	Pound rate (cents)
Pound Rate [6]:		
Pound Rates Plus Per Piece Rate	6.3	39.8
Discounts: Destination Entry (Per Pound)		
BMC		5.8
SCF		8.1
Delivery Office [2]		10.4
Presort Level (Per Piece):		
3- and 5-Digit	1.4	
Carrier Route	4.5	
Saturation	5.2	

Notes:
[1] A fee of $75.00 must be paid once each 12-month period for each bulk mailing permit.
[2] Applies only to carrier route presort and saturation mail.
[3] For letter size pieces meeting applicable Postal Service regulations.
[4] Among ZIP + 4 and barcode discounts, only one discount may be applied.
[5] Deducted from otherwise applicable 3- and 5-digit rate.
[6] Mailer pays either the piece or the pound rate, whichever is higher.

A commensurate change will be made in the special bulk third-class rate charts in section 611 of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations by 39 CFR 111.1, and a transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-27223 Filed 11-12-91; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearing Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549.

New, Rule 144A Information Request for Issuers.

New, Rule 144A Information Request for Intermediaries.

Revised, Rule 144A Information Request for Qualified Institutional Buyers.

File No. 270-342.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission has submitted for clearance an information request for issuers and intermediaries regarding market developments under Rule 144A. Respondent issuers incur an estimated average burden of one hour, respondent intermediaries incur an estimated average burden of 45 minutes, and respondent qualified institutional buyers incur an estimated average burden of 45 minutes to complete the information request. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the cost of Commission rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to Kenneth Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget [Paperwork Reduction Project 3235-0405, Paperwork Reduction Project 3235-0406, Paperwork Reduction Project 3235-0407], room 3208, New Executive Office Building, Washington, DC 20543.

Dated: November 5, 1991.

Jonathan Katz,

Secretary.

[FR Doc. 91-27180 Filed 11-12-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29905; File No. SR-MCC-91-04]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Advances of Dividends, Interest, and Other Payments or Distributions

November 5, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on October 28, 1991, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and Amendment No. 1 thereto as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends article VI, Rule 1, section 8 and Article VII, Rule 1, section 2 of MCC's Rules. Capitalized terms used herein have the same meanings ascribed to them in MCC's Rules. The proposed rule change clarifies MCC's rights with respect to dividends, interest, and other distributions in respect of securities that MCC has advanced to its Participants prior to receipt by MCC of such payments from issuers or paying agents.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified Item IV below. MCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The amendment to Article VI, Rule 1, section 8 clarifies that if an issuer or paying agent fails to make a cash distribution or payment in respect of securities and if MCC has credited Participants' accounts to reflect such cash distribution or payment, MCC has the right either to (a) require the Participants immediately to pay MCC cash in the amount so credited by MCC or (b) reverse such credits and reflect the reversal in the computation of the cash settlement balance due to or from MCC in accordance with article VI, Rule 1, section 1 of MCC's Rules.

The amendment to Article VII, Rule 1, section 2 clarifies that Participants are deemed immediately to have granted to MCC all their rights in and to the payments or distributions credited, but not then received, by MCC as described in the preceding paragraph. The amendment also makes clear that all rights to such payments or distributions revert to the Participants in the event MCC elects to reverse the credits for such payments or distributions as described in the preceding paragraph.

MCC believes that the proposed rule change is consistent with section 17A of the Act in that the proposed rule change provides greater certainty in the application of MCC's existing rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burden will be placed on competition as a result of the proposed rule change because the proposed rule change merely clarifies existing rights of MCC and its Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments with respect to the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and paragraph (e) of Rule 19b–4 thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR–MCC–91–04 and should be submitted by December 5, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–27254 Filed 11–12–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29906; File No. SR–NASD–91–46]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Appointment of Executive Representatives

November 6, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 23, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to article III, section 3 of the NASD By-Laws regarding the appointment of executive representatives. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

NASD By-Laws

Article III

* * * * *

Executive Representative

Sec. 3. Each member shall appoint and certify to the Secretary of the Corporation one "executive representative" who shall represent, vote and act for the member in all the affairs of the Corporation, except that other executives of a member may also hold office in the Corporation, serve on the Board of Governors or committees of the Corporation, or otherwise take part in the affairs of the Corporation. A member may change its executive representative upon giving written notice thereof to the Secretary, or may, when necessary, appoint, by written notice to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall [preferably] be a[n executive officer] *member of senior management and registered principal* of the member [,]. [if a Corporation, a partner in case of a partnership, and the member himself if an individual, but he may be an employee of the member, if given authority to act for the member in the course of the Corporation's activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Article III, section 3 of the NASD By-Laws requires members to appoint one "executive representative" who is responsible for voting and acting for the member in all affairs of the NASD. Currently, the executive representative designated by a member is also identified as the firm's "contact person" in the Form B–D and in the Central Registration Depository ("CRD"). The current qualification requirements of "executive representative" are both broad and optional, and have, in the past, led to the designation of persons who have limited authority in their firms. Since all important membership communications are directed to executive representatives, who are eligible to cast votes for their respective firms, the NASD is concerned that important matters may not be directed to the right person at each member.

The NASD proposes, therefore, to amend article III, section 3 of the By-Laws to require that only persons of

[1] The NASD also filed Amendment No. 1 to the proposed rule change on September 27, 1991 and Amendment No. 2 on October 7, 1991. Amendment No. 1, made at the request of the Commission staff, clarifies the NASD's interpretation of the proposed rule change as it may, in certain circumstances, apply to insurance company members. Amendment No. 2 provides the results of the NASD membership vote on the proposed rule (1,923 in favor, 177 against, 12 not voting, and 15 unsigned).

authority in a member firm who are members of the senior management of the member and registered principals may be designated as the executive representative to the NASD. Moreover, the word "preferably" is proposed to be deleted with the result that compliance with the provision would become mandatory.

In order to distinguish between the role of the executive representative and the member's contact person, who may be different from the executive representative, the NASD plans to maintain the Executive Representative list separately from the firm contact list in the CRD. This additional administrative procedure will assure that the Executive Representative will receive all important NASD communications and that routine CRD notices will be directed to the right persons at the member. Further, the Notice to Members announcing the SEC approval of the proposed rule change will include an executive representative form to be completed by all members to designate their executive representative. The NASD will request that the executive representative form be filed with the Secretary's Office of the NASD prior to the date that the rule change is effective. The NASD has requested that the rule change be effective 120 days after SEC approval in order to provide time for the filing of the executive representative form.

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(4) of the Act which requires that the "association assure a fair representation of its members in the selection of its directors and administration of its affairs * * *."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, participants, or Others

The proposed rule change was published for comment in Notice to Members 91-9 (February 1991). Five comments were received in response thereto. Of the 5 comment letters received, 3 were in favor of the proposed rule change and 2 were opposed.

Two commentators, both affiliated with insurance company members, were critical of the proposal, noting that in their companies, persons other than senior management were most qualified and most likely to handle the executive representative's duties. One commentator stated that, particularly for an insurance company that is a member, the person most familiar with securities activities and able to make decisions on the sorts of items sent out by the NASD is in middle management. The other commentator noted that their designated executive representative is neither a principal nor senior executive representative, but a lawyer that senior management believes is best qualified to evaluate the content of the frequent membership communications received from the Association and to direct them to persons in their diverse organization. The commentator believed that substituting an insurance company "principal," who has a narrower focus as to products, practices and regulatory affairs would "* * * diminish the dissemination of important communications from the Association." The NASD is aware that where the entire insurance company is a member, there may be circumstances where the most appropriate person to be designated "executive representative" is in the middle management of the company but is acting as senior management of the company's securities operations. The NASD believes that it is an appropriate interpretation of the proposed rule that, upon review, the NASD may permit an insurance company member to appoint as executive representative the most appropriate employee, registered as a principal, who is in an equivalent position to senior management in charge of the insurance company's securities operations. The NASD has, therefore, determined to include in the Notice to Members announcing approval of this rule change the clarification that insurance company members may request advice from the NASD's Membership and Qualifications Department regarding the applicability of this rule to their particular circumstances. One of the above insurance company commentators also questioned the appropriateness of the NASD substituting its judgement for that of the member in appointing a person to represent the member with the NASD. The NASD believes it has a significant interest in the determination of the primary contacts in members and that the proposed definition specifying the proper level of a person in member firms to receive communications and vote on NASD matters is a justifiable exercise of NASD authority.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. In addition, copies of such filing will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 5, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27253 Filed 11-12-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Conquest Exploration Company, Convertible Subordinated Debentures Due 2014 (File No. 1-8294)

November 6, 1991.

Conquest Exploration Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities

Exchange Act of 1934 and rule 12d2–2(d) promulgated thereunder to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company believes that delisting of the 9½% Convertible Subordinated Debentures ("Debentures") from the Amex is warranted because of the limited number of registered holders. According to the Company, as of September 30, 1991, there were four registered holder of the Debentures. Further trading in the Debentures on the Amex has not been active since before completion of the Company's repurchase offers for the Debentures. According to the Amex, the last trade of the Debentures took place in May, 1991. In addition, following delisting of the Debentures, the Company will no longer be subject to the reporting requirements of the 1934 Act. This will allow the Company to save compliance costs incurred in preparing separate annual and periodic reports to be filed with the Commission. The Company is not obligated under the indenture or any other document to maintain the listing of the Debentures on the Amex or any other exchange.

Any interested person may, on or before November 29, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–27181 filed 11–12–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2530]

California; Declaration of Disaster Loan Area

As a result of President's major disaster declaration on October 22, 1991, I find that Alameda County in the State of California constitutes a disaster area as a result of damages caused by the Oakland Hills fire beginning on October 20, 1991 and continuing. Applications for loans for physical damage may be filed until the close of business on December 23, 1991, and for loans for economic injury until the close of business on July 22, 1992, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento California 95853–4795. or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Contra Costa, San Joaquin, Santa Clara, and Stanislaus in the State of California may be filed until the specified data at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	8.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 253005 and for economic injury the number is 744200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 23, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–27182 Filed 11–12–91; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Santa Ana, will hold a public meeting from 9 a.m. to 1 p.m. on Friday, November 22, 1991 at the Doubletree Hotel, 67967 Vista Chino, Cathedral City, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John S. Waddell, District Director, U.S. Small Business Administration, 901 West Civic Center Drive, suite 160, Santa Ana, California 92703, (714) 836–2494.

Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91–27184 Filed 11–12–91; 8:45 am]

BILLING CODE 8025–01–M

Investment Advisory Council; Meeting

Time and Date: 11 a.m.-5 p.m. Wednesday November 20 and 9 a.m.-3 p.m. Thursday November 21, 1991.

Place: The meeting will be held in Eisenhower Conference Room on the eighth floor of SBA headquarters at 409 Third Street, SW., Washington, DC.

Purpose: The meeting is being held to discuss such matters concerning the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) programs as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, contact John Simonds, room 8500, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7596.

Dated: November 4, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91–27183 Filed 11–12–91; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, will hold a public meeting from 9 a.m. to 4 p.m. on Thursday, November 14, 1991 at the U.S. Small Business Administration, Equitable Building, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor,

Baltimore, Maryland 21202, (301) 962–2054.

Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91–27185 Filed 11–12–91; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council Meeting

The U.S. Small Business Administration Region VIII Advisory Council located in the geographical area of Salt Lake City, will hold a public meeting at 10 a.m. on Tuesday, December 3, 1991, in the Board Room of Zion First National Bank, One Main Street, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Stan Nakano, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah 84138, (801) 524–5804.

Caroline J. Beeson,

Assistant Administrator for National Advisory Councils.

[FR Doc. 91–27186 Filed 11–12–91; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, will hold a public meeting beginning at 1 p.m. on Wednesday, November 13, 1991, and concluding at 12 noon on Thursday, November 14, 1991, at Marshall University, 1050 Forth Avenue, Huntington, West Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Marvin P. Shelton, District Director, U.S. Small Business Administration, 168 West Main Street, suite 600, Clarksburg, West Virginia 26302–1806, (304) 623–5631.

Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91–27187 Filed 11–12–91; 8:45 am]

BILLING CODE 8025–01–M

Senior Executive Service Performance Review Board; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of Personnel Serving as Members of this Agency's Senior Executive Service Performance Review Boards.

SUMMARY: Section 4314(C)(4) of Title 5, U.S.C. requires Federal agencies publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. John H. Barrett, Assistant Administrator for Hearings and Appeals.
2. Lawrence E. Barrett, Assistant Administrator for Information Resources management (Substitute member, if required).
3. Michael P. Forbes, Assistant Administrator for Congressional and Legislative Affairs (Also serving as Acting Regional Administrator, Region II).
4. Charles R. Hertzberg Assistant Administrator for Financial Assistance.
5. Thomas C. Hockaday, Counselor to the Administrator.
6. Robert G. Moffitt, Associate Administrator for Procurement Assistance.
7. Richard L. Osbourn, Director of Personnel.
8. George H. Robinson, Director, Equal Employment Opportunity and Compliance.
9. Anne E. Stanley, Chief of Staff (Substitute member, if required).
10. Mitchell F. Stanley, Associate Deputy Administrator for Finance, Investment and Procurement.
11. John D. Whitmore, Deputy to the Associate Deputy Administrator for Management and Administration.
12. Janice E. Wolfe, Deputy to the Associate Deputy Administrator for Finance, Investment and Procurement.

Dated: October 9, 1991.

Patricia F. Saiki,

Administrator.

[FR Doc. 91–27187 Filed 11–12–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1520]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group a Meeting

The Department of State announces that CCITT Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Tuesday, December 3, 1991 in Conference room 1107, commencing at 9:30 a.m. at the Department of State, 2201 C Street NW., Washington, DC 20520.

The Agenda for Study Group A will include the following: a debrief of the results of CCITT Ad Hoc group for Resolution #18 session held in Geneva October 28 to November 1; reports from the various ad hoc groups, such as UPT, telephone accounting, etc.; a debrief of the Study Group I meeting held in Japan November 14–26; and to initiate preparations for the 1992 Winter/Spring meetings of Study Groups I, II and III.

Members of the general public may attend the meetings and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, person who plan to attend should so advise the Office of Earl S. Barbely, Department of State, 202–647–0201 (fax 202–647–7407). The above includes government and non-government attendees. Notification should include Date of Birth and Social Security Number, unless person has already provided this information to this office. All attendees must use the C Street entrance.

Dated: October 25, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 91–27217 Filed 11–12–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 1, 1991

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a

tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47814.

Date filed: October 30, 1991.

Due Date for Answers. Conforming Applications, or Motion to Modify Scope: November 27, 1991.

Description: Application of Japan Asia Airways Co., Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit, to engage in scheduled foreign air transportation of persons, property and mail between Nagoya, Japan, on the one hand, and Guam and Saipan, on the other.

Docket Number: 47817.

Date filed: October 31, 1991.

Due Date for Answers. Conforming Applications, or Motion to Modify Scope: November 28, 1991.

Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity to authorize service between Orlando, Florida, and Mexico City, Mexico.

Docket Number: 47708.

Date filed: October 30, 1991.

Due Date for Answers. Conforming Applications, or Motion to Modify Scope: November 27, 1991.

Description: Amendment No. 1 to the Application of American Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Act requests that New York/Newark be added as a co-terminal point for service to Venezuela on American's certificate for Route 543.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-27200 Filed 11-12-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM-81-42) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before December 12, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Hampton and Branchville Railroad Company, Inc. (Waiver Petition Docket Number RSGM-81-42)

The Hampton and Branchville Railroad Company, Inc. (HB) was granted a waiver of compliance, with certain conditions, of the Safety Glazing Standards (49 CFR part 223) for four locomotives in 1982. Two of these locomotives have been removed from service and seven additional ones have been purchased. The HB has requested that these be added to RSGM-81-42. The HB operates on 40 miles of track between Hampton and Canadys, South Carolina, at a maximum speed of 25 MPH.

Youngstown and Austintown Railroad, Inc. (Waiver Petition Docket Number RSGM-91-17)

The Youngstown and Austintown Railroad, Inc. (YARR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The railroad operates over approximately 3.5 miles of track primarily in the Youngstown & Austintown Industrial Park, Ohio. The locomotive is equipped with safety glass and the carrier states there is no record of vandalism relating to glazing.

Plymouth and Lincoln Railroad (Waiver Petition Docket Number RSGM-91-18)

The Plymouth and Lincoln Railroad (PLL) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for four locomotives and four passenger cars. The PLL was previously granted waiver RSGM-87-17 for one locomotive operating on approximately 6.5 miles of track. The carrier has recently purchased four additional locomotives and four passenger cars and expanded their operation 10 miles between Laconia and Meredith, New Hampshire.

Alabama River Pulp Company Inc. (Waiver Petition Docket Number RSGM-91-19)

The Alabama River Pulp Company, Inc. (ALRX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The locomotives operate primarily in-plant with 5-10 percent of the time switching cars to and from adjacent Burlington Northern Railroad Company storage tracks. Replacement of the glazing with FRA certified types would be an economic hardship for the railroad.

Mohawk Adirondack and Northern Railroad Corporation (Waiver Petition Docket Number RSGM-91-20)

The Mohawk Adirondack and Northern Railroad Corporation (MHWA) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for eight locomotives and three cabooses. The MHWA operates on two former Consolidated Rail Corporation lines between Carthage and Lowville and between Carthage and Newton Falls, New York, a distance of approximately 61 miles. The area is predominantly rural with sections in Adirondack State Park.

Chicago Chemung Railroad Corporation (Waiver Petition Docket Number RSGM-91-21)

The Chicago Chemung Railroad Corporation (CCR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The CCR operates on 2.5 miles on is own track and 0.5 miles of Chicago and Northwestern Transportation Company (CNW) interchange track. The railroad runs through a rural area between Harvard, Illinois and County Line Road at a maximum speed of 10 mph. The railroad reports that some glazing is in need of replacement and the expense of installing FRA certified glazing would be an economic hardship.

Georgia Woodlands Railroad Company (Waiver Petition Docket Number RSGM–91–22)

The Georgia Woodlands Railroad Company (GWRC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The GWRC operates approximately 17 miles of track between Washington and Barnett, Georgia. A waiver was granted to their predecessor, Georgia Eastern Railroad Company, under Docket Number RSGM–87–10.

Escanaba and Lake Superior Railroad Company (Waiver Petition Docket Number RSGM–91–23)

The Escanaba and Lake Superior Railroad Company (ELS) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for locomotives and passenger cars. The ELS is a 342-mile regional railroad operating in the upper peninsula of Michigan and northeastern Wisconsin. The main route is between Ontonagon, Michigan, and Green Bay, Wisconsin. The railroad reports there have been no incidents relating to glazing.

Issued in Washington, DC on November 4, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91–27021 Filed 11–12–91; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 6, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0090.
Form Number: ATF F 1643 (5100.18).
Type of Review: Extension.
Title: Application for Amended Basic Permit Under the Federal Alcohol Administration Act.
Description: ATF Form 1643 (5100.18) is completed by persons who have a basic permit to operate as an importer or wholesaler, producer, rectifier, bottler, or warehouseman of distilled spirits, wine or malt beverages on file with ATF, but who wish to change their basic permit due to changes in location or operations of their business.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Responses: 4,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of response: On occasion.
Estimated Total Reporting Burden: 4,000 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW. Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–27227 Filed 11–12–91; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 6, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS form 8828.
Type of Review: New collection.
Title: Recapture of Federal Mortgage Subsidy.
Description: Form 8828 is needed to compute the section 143(m) tax on recapture of the Federal subsidy from use of qualified mortgage bonds and mortgage credit certificates in cases where the financing is provided after 1990 and the home subject to the financing is sold during the first 9 years after financing was provided. IRS uses the information to determine that the proper amount of Federal subsidy is recaptured.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 200.
Estimated Burden House Hours Per Respondent/Recordkeeper:
Recordkeeping—26 min.
Learning about the law or the form—16 min.
Preparing the form—32 min.
Copying, assembling, and sending the form to IRS—20 min.
Frequency of Response: Other (For year of sale of home).
Estimate total Reporting/Reporting Burden: 318 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–27228 filed 11–12–91 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 219
Wednesday, November 13, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 19, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–27368 Filed 11–8–91; 1:39 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, November 19, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–27369 Filed 11–8–91; 1:39 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 26, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Proposed rules of the Chicago Mercantile Exchange and the Intermarket Clearing Corporation to expand cross-margining proposals to include certain market professionals.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–27370 Filed 11–8–91; 1:39 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:45 a.m., Tuesday, November 19, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–27371 Filed 11–8–91; 1:39 pm]

BILLING CODE 6351–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 14, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Farm Credit System Building Association Budget
2. Policy on Disclosure of Enforcement Actions
3. Regulations
   a. Part 615, Subpart E—Investment Management (Proposed)

Dated: November 7, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–27324 Filed 11–7–91; 4:29 pm]

BILLING CODE 6705–01–M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

November 7, 1991

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: November 14, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 947th Meeting—November 14, 1991, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 3671–043, Allegheny Hydro Partners
Project No. 3494–045, Allegheny No. 6 Hydro Partners

CAH–2.
Project No. 2370–035 and Docket No. EL89–35–001, Pennsylvania Electric Company

CAH–3.
Omitted

CAH–4.
Project No. 6731–003, Aquenergy Systems, Inc. and Coneross Power Corporation

CAH–5.
Project No. 2959–033, City of Seattle, Washington

CAH–6.
Docket No. 9085–002, Richard Balagur

CAH–7.
Omitted

CAH–8.
Docket No. UL91–1–001, City of Soda Springs, Idaho

CAH–9.
Project No. 4669–026, Rancho Riata Hydro Partners, Inc.

CAH–10.
Project No. 10661–002, Michigan Power Company and Indiana Michigan Power Company

CAH–11.
Project No. 2105–021, Pacific Gas and Electric Company
CAH–12.
Omitted
CAH–13.
Omitted
CAH–14.
Report to Congress on Appropriateness of Statutory Limit on Government Dam Annual Charges under Section 10(e) of the Federal Power Act

Consent Agenda—Electric

CAE–1.
Docket Nos. EC92–1–000 and EL92–5–000, Commonwealth Atlantic Limited Partnership
CAE–2.
Docket No. ER91–535–000, Illinois Power Company
CAE–3.
Docket Nos. EC91–9–002, EL91–22–002 and ES91–21–002, UtiliCorp United, Inc. and Centel Corporation
CAE–4.
Docket No. EL91–49–001, Citizens for Clean Air and Reclaiming Air Environment v. Newbay Corporation
CAE–5.
Docket No. EF90–5171–002, United States Department of Energy—Western Area Power Administration (Salt Lake City Area Integrated Projects)
CAE–6.
Docket Nos. RM90–5–000, RM90–4–001, RM87–26–004, 003, RM90–5–000 and 001, Update of Filing Fees Under the Independent Offices Appropriateness Act of 1952
Docket No. ER88–177–000, Southwestern Electric Power Company
Docket No. ER88–109–000, Commonwealth Edison Company
Docket No. ER88–81–000, West Texas Utilities Company
CAE–7.
Docket No. ER90–39–002, Central Louisiana Electric Company, Inc.
Docket No. EL91–3–000, Louisiana Energy and Power Authority v. Central Louisiana Electric Company, Inc.
CAE–8.
Docket No. ER91–124–000, Missouri Public Service Company

Consent Agenda—Oil and Gas

CAG–1.
Docket Nos. RP92–13–000 and 001, Wyoming Interstate Company, Ltd.
CAG–2.
Docket No. RP90–22–014, Algonquin Gas Transmission Company
CAG–3.
Docket No. RP91–93–000, Transcontinental Gas Pipe Line Corporation
CAG–4.
Docket No. FA87–008–003, Columbia LNG Corporation
CAG–5.
Docket No. TQ92–2–48–000, ANR Pipeline Company
CAG–6.
Docket Nos. TQ91–3–16–001, TF91–11–16–001 and TQ91–3–16–002, National Fuel Gas Supply Corporation
CAG–7.
Docket Nos. TA90–1–52–000 and 002, Western Gas Interstate Company
CAG–8.
Docket Nos. RP89–1–004 and 016, Northwest Pipeline Corporation
CAG–9.
Docket No. RP91–215–001, Transwestern Pipeline Company
CAG–10.
Docket No. RP91–181–000, Northern Natural Gas Company
CAG–11.
Docket No. RP91–104–000, *et al*; Transwestern Pipeline Company
Docket No. RP91–79–000, *et al*; East Tennessee Pipeline Company
Docket No. RP91–47–000, *et al*; National Fuel Gas Supply Corporation
CAG–12.
Docket No. TM91–9–29–002, Transcontinental Gas Pipe Line Corporation
CAG–13.
Docket Nos. TM2–2–37–000, 001 and 002, Northwest Pipeline Corporation
CAG–14.
Docket Nos. TM91–7–22–004, TM91–22–000, 002 and RP91–51–009, CNG Transmission Corporation
CAG–15.
Omitted
CAG–16.
Omitted
CAG–17.
Docket No. RP88–92–028, United Gas Pipe Line Company
Docket No. RP91–28–001, Entex, a Division of Arkla, Inc., Louisiana Gas Service Company and New Orleans Public Service, Inc. (Complainants) v. United Gas Pipe Line Company (Respondent)
CAG–18.
Omitted
CAG–19.
Docket No. RP91–188–001, El Paso Natural Gas Company
CAG–20.
Docket Nos. CP88–391–005, RP88–167–003, RP73–3–011, RP82–55–049, RP85–148–011, CP72–255–003, CP89–759–009, CP90–2228–002, CP90–2229–002, RP87–7–072, CP90–2230–003, CP89–728–002, CP89–790–002, RP87–7–000, 012, CP88–273–001, CP88–328–006, CP89–1916–003, CP90–8–005, RP90–51–001, CP90–499–001, CP84–146–008, CP84–336–006, G–12503–001, G–12509–001, RP82–55–047 AND CP91–2819–000, Transcontinental Gas Pipe Line Corporation
CAG–21.
Docket Nos. RP91–82–006 and RP90–108–014, Columbia Gas Transmission Corporation
Docket No. RP90–107–012, Columbia Gulf Transmission Company
CAG–22.
Docket Nos. CP89–1281–000, 014 and TA90–1–26–004, Natural Gas Pipeline Company of America
CAG–23.
Docket No. CP82–487–035, Williston Basin Interstate Pipeline Company
CAG–24.
Omitted
CAG–25.
Docket Nos. RP88–115–000, RP90–104–000, RP90–192–000 and CP88–686–004, Texas Gas Transmission Corporation
CAG–26.
Docket Nos. RP88–44–000, *et al.*, RP91–139–000 and CP92–4–000, El Paso Natural Gas Company
CAG–27.
Docket Nos. RP79–59–000 and RP90–69–008, Colorado Interstate Gas Company
CAG–28.
Docket Nos. FA85–34–000 and 001, Stingray Pipeline Company
CAG–29.
Docket No. PR91–23–000, Midcoast Ventures I
CAG–30.
Docket No. GP91–13–000, Phillips Petroleum Company and Marathon Oil Company
CAG–31.
Omitted
CAG–Docket No. RM90–7–001, Revisions to Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates
Docket No. GP88–11–004, Hadson Gas Systems, Inc.
Docket No. CP88–286–005, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, *et al.*
Docket Nos. RP88–81–015, RP88–67–048 and RP88–175–003, Texas Eastern Transmission Corporation
CAG–33.
Docket No. RM90–1–001, Revisions to Regulations Governing Authorization for Construction of Natural Gas Pipeline Facilities
CAG–34.
Docket No. CP90–959–001, Distrigas of Massachusetts Corporation
CAG–35.
Docket No. CP88–557–002, Koch Hydrocarbon Company
CAG–36.
Docket No. CP89–629–006, Tennessee Gas Pipeline Company
CAG–37.
Docket Nos. CP88–665–002, CP88–723–001, CP88–755–001 and CP89–341–001, Viking Gas Transmission Company
CAG–38.
Docket Nos. CP90–162–001, CP90–217–001, CP90–297–001, CP90–433–001, CP90–468–001 and CP90–604–001, Tennessee Gas Pipeline Company
CAG–39.
Docket No. CP90–454–001, Midwest Gas Storage Inc.
CAG–40.
Docket No. CP92–107–000, Colorado Interstate Gas Company
CAG–41.
Docket Nos. CP82–457–014 and 034, Williston Basin Interstate Pipeline Company
CAG–42.
Docket No. CI91–85–000, Commonwealth Gas Company
Docket No. CI91–94–000, New York State Electric & Gas Corporation
Docket No. CI91–97–000, Niagara Mohawk Power Corporation

Docket No. CI91-104-000, New Jersey Natural Gas Company
Docket No. CI92-1-000, Washington Natural Gas Company
Docket No. CI89-461-000, Quantum Chemical Corporation
Docket No. CI91-88-000, Doswell Limited Partnership
Docket No. CI91-93-000, Lockport Energy Associates, L.P.
Docket No. CI91-101-000, North Jersey Energy Associates
Docket No. CI91-102-000, Northeast Energy Associates
Docket No. CI91-103-000, Ocean State Power II
Docket No. CI91-106-000, Honda of America Mfg., Inc.
Docket No. CI91-126-000, Manville Corporation, *et al.*
Docket No. CI91-128-000, Cogen Energy Technology, L.P.

CAG-43.
Docket No. CP91-2799-000, Northern Natural Gas Company

CAG-44.
Docket No. CP91-2429-000, Transcontinental Gas Pipe Line Corporation

CAG-45.
Docket No. CP91-1-000, El Paso Natural Gas Company

CAG-46.
Docket No. CP91-1852-000, Chevron U.S.A. Inc. v. Southern Natural Gas Company

CAG-47.
Docket No. RP91-161-000, Columbia Gas Transmission Corporation
Docket No. RP91-160-000, Columbia Gulf Transmission Company

Hydro Agenda

H-1.
(A) Docket No. RM89-7-001, Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters. Order on rehearing.
(B) Project No. 3188-005, Joseph M. Keating. Order on rehearing.
(C) Project No. 3194-010, Joseph M. Keating. Declaratory order.

H-2.
Project No. 7270-007, Northern Wasco County People's Utility District. Order on offer of settlement.

Electric Agenda

E-1.
Docket No. RM92-1-000, Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities, And to Form Nos. 1, 1-F, 2 and 2-A. Notice of proposed rulemaking.

Miscellaneous Agenda

M-1.
Docket No. RM91-10-000, Comprehensive Review of Commission Ex Parte Regulations. Notice of intent to establish negotiated rulemaking committee.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Docket Nos. RP88-262-000, CP89-917-000, TA89-1-28-000, TA90-1-28-000, RP88-88-008 and RP91-229-000, Panhandle Eastern Pipe Line Company. Order on initial decision.

PR-2.
Docket Nos. RP87-103-000 and 001, Panhandle Eastern Pipe Line Company. Order on settlement.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Reserved

Lois D. Cashell,
Secretary.
[FR Doc. 91-27351 Filed 11-8-91; 1:38 pm]
BILLING CODE 6717-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 6, 1991.

TIME AND DATE: 10:00 a.m., Wednesday, November 13, 1991.

PLACE; Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Explosives Technologies International, Inc.*, Docket No. CENT 90-95-M. (Issues include whether the judge properly found that the operator violated (1) 30 CFR § 56.5050(b) for failing to use feasible administrative or engineering controls to reduce drill operator's exposure to excessive noise; and (2) 30 CFR § 56.7002 for cracks in the boom support structure of a drill.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2700.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202 708-9300 for TDD Relay 1-800-877-8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 91-27378 Filed 11-8-91; 1:40 pm]
BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 11:00 a.m., Wednesday, November 13, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 8, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-27452 Filed 11-8-91; 4 pm]
BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-91-34]

TIME AND DATE: November 22, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda of future meeting.
2. Minutes.
3. Ratification List.
4. Petitions and complaints.
5. Inv. No. 731-TA-473 (Final) (Certain Electric Fans from China)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: November 5, 1991.

Edward Carroll,
Acting Secretary.
[FR Doc. 91-27367 Filed 11-8-91; 1:41 pm]
BILLING CODE 7020-02-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 2-92

Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Thurs., Nov. 21, 1991 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, D.C. on November 6, 1991.

Judith H. Lock,

Administrative Officer.

[FR Doc. 91–27326 Filed 11–7–91; 4:30 pm]

BILLING CODE 4410–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m. Tuesday, November 19, 1991.

PLACE:

Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

Open Meeting: Item 1
Closed Meeting: Items 1–6

Conference Room B, Sixth Floor, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20006

Closed Meeting: Item 7

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. Housing Finance Directorate
   B. District Banks Directorate

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the October Board Minutes.
2. Examination Report.
3. 1992 FHLBank Presidents' Compensation.
4. 1992 Finance Board Budget.
5. Semi-annual Update on Office of Inspector General Activities.
6. Briefing for Advisory Council Meeting.
7. Meeting with Advisory Council Representatives.

The above matters are exempt under one or more of sections 552(c)(2), (6) (8), (9)(A), and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (6), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–27459 Filed 11–8–91; 8:49 pm]

BILLING CODE 6725–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m. Wednesday, November 20, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board will consider the following:

1. 1992 Bank System/Office of Finance Budget.
2. Indemnification Policy.
3. Legislative/Strategic Discussion.

The above matters are exempt under one or more of sections 552(c)(2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (6), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–27460 Filed 11–8–91; 8:49 pm]

BILLING CODE 6725–01–M

federal register

Wednesday
November 13, 1991

Part II

Postal Service

39 CFR 111

ZIP+4 and ZIP+4 Barcoded Rate Presort Requirements; Final Rule

POSTAL SERVICE

39 CFR Part 111

ZIP+4 and ZIP+4 Barcoded Rate Presort Requirements

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule adopts, with revisions, a portion of the proposed rule published in the **Federal Register** on June 25, 1991, 56 FR 29072, amending the regulations of the Postal Service governing the presort requirements for ZIP+4 and ZIP+4 barcoded rates. Specifically, this final rule modifies some existing requirements for preparing letter-size automation rate mailings described in Chapter 5 of the Domestic Mail Manual (DMM), and adds a new option to Chapter 5 for preparing First- and third-class ZIP+4 barcoded mail.

The portion of the June 25, 1991, proposed rule amending the physical requirements for ZIP+4 and ZIP+4 Barcoded rate mail was addressed in a separate final rule published on October 16, 1991, 56 FR 51838. The Postal Service is deferring action on that portion of the proposed rule which proposed amendments to the preparation requirements for ZIP+4 and ZIP+4 barcoded second-class mail rates. The Postal Service has determined, based upon a review of these regulations, that the preparation requirements for second-class automation based rates need further study. Instead of delaying the publication of the final rule on all the proposed preparation requirements, the Postal Service has decided to publish the amended rules for First- and third-class mail—which comprise the great majority of automation based mailings—and address the requirements for second-class mail in a separate final rule.

DATES: *Effective Date:* November 13, 1991. See Supplementary Information for information about compliance dates.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Martin (202) 268–5176, or Mr. Richard Arvonio (202) 268–5164.

SUPPLEMENTARY INFORMATION:

Compliance Dates: Mailers may use the presort preparation options established by this final rule immediately. The changes to existing preparation rules for tray-based ZIP+4 Presort mail in DMM 562.2 will become mandatory on March 15, 1992. Until that time the existing regulations (renumbered as DMM 562.1) may continue to be used. The new requirements for preparation of tray-based ZIP+4 Barcoded rate mail in DMM 563.2 will become mandatory on March 15, 1992. Until that time the existing regulations (renumbered as DMM 563.1) may continue to be used. The requirement that only 2-foot trays may be used with chapter 5 preparation of ZIP+4 and ZIP+4 barcoded tray-based mailings (562 and 563) will become mandatory on December 20, 1992. The requirement that mail prepared in 5-digit trays must be 100 percent ZIP+4 barcoded will also become mandatory with the issuance of the Domestic Mail Manual on December 20, 1992, for tray-based ZIP+4 barcoded mailings (563). For package-based ZIP+4 barcoded mailings prepared under 564, the requirement that 100 percent of the pieces in the 5-digit presort tier bear a ZIP+4 barcode and the requirement that only 2-foot trays be used to prepare mailings are effective immediately.

The Postal Service received a total of 43 comments on the portion of the proposed rule addressed in this final rule, including 4 from mailing industry trade associations, 11 from mailing-related businesses, and 28 from companies and corporations. On the basis of the comments received, and further consideration of the proposals by the Postal Service, the Postal Service has decided to adopt the proposed regulations with a number of revisions described in detail below. The Postal Service has provided for delayed effective dates for some requirements to allow mailers time to adjust their mailing operations to the new requirements.

Evaluation of Comments Received

A. Comments Concerning the Time Frame for Mandatory Use of DMM Chapter 5 Traying Requirements To Sort Automated Rate Mailings.

Nineteen commenters responded to the Postal Service request for comments regarding a proposed March 1992 date for requiring that automation rate mailings be prepared in accordance with chapter 5 of the Domestic Mail Manual. Alternative dates for required use of chapter 5 sortation ranging from June of 1992 through September 1993 were proposed by 11 different commenters. Based upon the fact that chapter 5 will require 100 percent ZIP+4 barcoding in the portion of the mailing qualifying for 5-digit ZIP+4 Barcoded rates, three of these commenters recommended that September 1992, and four recommended that September 1993, would be more feasible dates for required use of chapter 5 sortation rules. Five commenters indicated that it is not so much the date itself, but the amount of lead time given between publication of the final regulations and the date of implementation that is important, because mailers and software vendors need to make software and production changes, and then need production lead time for mailings intended for release after the implementation date. Software vendors indicated that additional time must be allowed for them to distribute new software and train mailers in its use. Two of these commenters indicated that at least 120 days' notice is required. One other commenter indicated that their vendors are still trying to provide them with software changes from the last rate change and that rapid changes in requirements are costly to mailers. One commenter requested that a definite date not be set at this time.

One commenter stated that the current regulations in chapters 3, 4, and 6 are confusing and that consolidation in chapter 5 should help make them more standard, but that the Postal Service still needs to watch the needs of individual mailers. One commenter stated that the Postal Service needs to fine-tune the DMM language as chapter 5 becomes mandatory. One commenter requested that Chapter 5 and its mandatory traying never become mandatory for third-class mail. Two commenters stated the USPS will need to conduct training seminars to educate both customers and USPS personnel concerning the new requirements.

The Postal Service has, after consideration of all the comments, decided to set a tentative date of December 20, 1992, for the mandatory use of chapter 5 regulations for preparing automation-based mail. The Postal Service will address this issue in detail in a separate proposed rule to be published in the next few months. The future proposed rule will modify Chapters 3, 4, 5, and 6 to effect this change.

B. Chapter 5 Sortation Changes

1. General Comments

Six commenters stated they were, in general, pleased with the proposed chapter 5 changes. Three of these commenters indicated approval of the changes because they believe that national mailers should now be able to qualify as much or more third-class mail for rate discounts under chapter 5 as they can under current chapter 6 regulations, and because national First-Class Mailers would now be better able to take advantage of ZIP+4 and ZIP+4 Barcoded rate discounts.

Nine commenters applauded the USPS for adjusting the mail preparation

regulations based on dialogue with mailers and a new "spirit of cooperation."

One commenter stated that he does not like the USPS "changing the rules in mid-stream" and that he was generally displeased with the proposed regulations because they will make it difficult for mailers to recover costs for recently purchased barcoding equipment. Another commenter stated that these regulations impose more processing and related costs on mailers and that the Postal Service will need to give additional discounts to get mailers to invest in necessary equipment. The Postal Service believes that the result of these changes in the regulations will be to make the requirements easier for mailers to meet while still allowing the Postal Service to recover appropriate savings from mailer work sharing. Some modifications to this final rule have been made that will allow mailers to more efficiently take advantage of automated rate mailing discounts.

2. Revisions to Chapter 5 ZIP+4 Presort (DMM 562)

There were no comments received concerning the proposal to allow SCF trays to be less than full provided the pieces in the trays are prepared in 3-digit packages and labeled, or to the proposal clarifying that documentation must separately show the number of pieces in 3-digit trays and the number of pieces in SCF trays.

Comments concerning the proposal to include First-Class ZIP+4 residual mail in the documentation; the proposal that mail in residual trays either be put in numeric ZIP Code sequence or be physically separated by rate qualification; the proposal that mail in less than full residual trays be packaged and labeled; the proposal that mail in overflow trays be labeled (it is currently required to be packaged); and the proposed clarification and standardization of tray label requirements are dealt with in conjunction with comments concerning these proposed requirements for ZIP+4 barcoded mail in subsequent sections of this final rule.

One commenter pointed out that the existing and the proposed DMM 562 requirements for preparation of ZIP+4 Mail require traying of mail by 5-digit ZIP Code. The commenter currently performs automated site 3-digit preparation and indicated it would be impossible to isolate full trays of 5-digit mail because the size and thickness of their mail varies throughout the country. The commenter would like to see some relief from this requirement, preferably a package-based 3-digit sortation option, added to ZIP+4 Presort rate chapter 5 requirements before chapter 5 is made mandatory. The Postal Service agrees with the commenter that this may be a problem for some mailers. Accordingly, this final rule adds a provision to DMM 562.2 allowing mailers the option not to prepare 5-digit trays when a tray-based ZIP+4 Presort mailing is limited to the automated sites in DMM Exhibit 122.63m. Although the Postal Service has not added a package-based sortation option for ZIP+4 mail as part of this final rule, the Postal Service is considering proposing such an option as part of a separate rulemaking process in the future.

3. Requiring a 50-piece Minimum per 3-Digit ZIP Code Area for SCF Trays in Package-Based ZIP+4 Barcoded Mailings.

One commenter stated that this change is a welcomed revision. He indicated it will simplify documentation requirements and enable smaller third-class mailers to qualify a higher percentage of mailings for presort discounts.

Two commenters indicated concern that this requirement will cause less third-class mail to qualify for 3-digit rates. One of these commenters based his comments on the assumption that the proposed rule added a 50-piece requirement to the current tray-based barcoded preparation requirements. This commenter stated that Multi Line Optical Character Reader (MLOCR) presort bureaus need pieces to qualify for 3-digit rates before their barcoding operation is cost effective and that this rule change will affect their ability to do that. This commenter stated that this change will dampen mailer participation in barcoding and indicated concern about the origin and purpose of this requirement, which he characterized as arbitrary or perhaps based upon a hidden agenda to advance the proprietary software and firmware of constituents of the Mailer's Technical Advisory Committee (MTAC).

As explained in the proposed rule, the 50-piece requirement was proposed for the new package-based option because a substantial number of 3-digit presorted pieces is necessary before a presortation discount can be justified for a 3-digit barcoded mail make-up. The Postal Service did not propose to require a 50-piece minimum per 3-digit ZIP Code area for second- and third-class mail prepared under the tray-based ZIP+4 Barcoded rate option. As indicated in the proposed rule, the 10/50 piece presortation rules were not extended to tray-based regulations because the Postal Service believed that this would be a hardship for second- and third-class mailers who currently prepare full SCF trays under this option and because the full-tray requirement under that option provides for a substantial number of pieces. In tray-based ZIP+4 Barcoded mailings, full trays to 3-digit and SCF areas are needed to qualify for 3-digit ZIP+4 Barcoded rates. By contrast, mailers qualify for 3-digit ZIP+4 barcoded rates in package-based mailings based solely upon meeting the requirement for 50 pieces to a 3-digit ZIP Code area. Generally, this is a smaller quantity than a full tray.

The final rule on tray-based preparation (see DMM 563.1 and 563.2) continues to allow second-class (563.1 only) and third-class mailings to obtain 3-digit ZIP+4 barcoded rates by filling 3-digit trays or by filling SCF trays with groups of 3-digit presorted pieces without requiring 50-piece groups per each 3-digit ZIP Code area within the SCF tray. Therefore, mailers that prepare mail under the current tray-based regulations will not be affected by the 50-piece requirement.

The other commenter who indicated concern about qualification for 3-digit rates contrasted the current 10-piece package minimum in chapter 6 preparation with the 50-piece minimum requirement for chapter 5 package-based preparation and indicated the increase from 10 pieces to 50 pieces will take away the benefit given to third-class mailers in the last rate case of migrating 3-digit mail from the basic rate category to the 3/5 presort category. Although current chapter 6 presort rules require only 10-piece packages to a 3-digit area, those rules further require at least 125 pieces or 15 pounds of mail in each 3-digit sack before any 3-digit package can qualify for the 3-digit ZIP+4 Barcoded rates (the sack may contain both 5-digit and 3-digit packages). Because of this, the Postal Service does not believe that the new package-based regulations will cause a significant rate hardship to most third-class mailers. In fact, use of the new chapter 5 package-based regulations may permit significantly more pieces to qualify for 5-digit and 3-digit ZIP+4 Barcoded rates because the rate qualification is based only on the number of pieces in the package, and is not dependent on any other volume requirements for filling containers of mail.

One commenter stated that the new 50-piece package requirements for chapter 5 mailings will increase the amount of residual mail, which in turn will result in an increase in mailer handling costs when packaging and

sacking residual as a separate mailing. However, neither the tray-based nor the package-based ZIP+4 barcoded regulations require preparation of residual as a separate mailing. Furthermore, under the package-based option, it is possible that the amount of residual/basic mail would actually be reduced since qualification for 3-digit ZIP+4 Barcoded rates is based upon 50-piece packages rather than full 3-digit or full SCF trays.

4. 100 Percent Barcoding of 5-Digit ZIP+4 Barcoded Rate Mail.

Eighteen commenters commented on this issue. One commenter suggested that the 100 percent barcoded requirement be made optional. Three commenters stated that this requirement will hurt their presort qualification. Two other commenters noted that in addition to reducing qualification for discounts, this requirement will increase operational costs for mailers. One commenter stated that there is no equipment available now to cull out nonbarcoded mail, and that developing such equipment will be costly. Two commenters stated that this requirement should not be imposed because of a belief that mail rejected from barcode sorters at associate offices or delivery units would be worked manually at those facilities; these commenters stated that the rejected pieces would not have an adverse financial impact on the Postal Service since a higher rate is paid on the rejected pieces and the rejected pieces are limited to 15 percent of the mail. Two commenters stated that the requirement should not be imposed because moving non-ZIP+4 codeable mail to 3-digit mailstreams will require the Postal Service to perform extra handling to sort this mail to 5-digits. One commenter stated that this requirement should be imposed only for delivery point barcodes and two commenters suggested that implementation of this requirement should be tied in with significant deployment of barcode sorters in delivery units.

By September of 1992, the Postal Service will have significant deployment of more than 2000 barcode sorters in the field. Although some commenters appear to believe so, this deployment is not dependent upon implementation of the delivery point barcode system. These barcode sorters will be located in associate offices and stations and branches in addition to General Mail Facilities (GMFs). This deployment will allow the Postal Service to reduce or eliminate the need for manual distribution at these locations, and will result in the Postal Service having limited capacity to process nonbarcoded mail manually in associate offices and stations and branches. Accordingly, mailpieces that do not bear a ZIP+4 barcode may have to be sent back to the GMF for processing. This additional transportation and distribution will negatively impact service and increase the Postal Service's operational costs. Therefore, although the Postal Service recognizes that requiring 100 percent ZIP+4 or delivery point barcoding of mailpieces in the 5-digit portion of a ZIP+4 barcoded mailing will cause mailers to incur some up-front operational expenses, and that it will have some effect on rate eligibility, the Postal Service does not believe it will be operationally sound to continue to accept non-ZIP+4 barcoded pieces in the 5-digit portion of ZIP+4 barcoded mailings.

Five commenters indicated their companies will never reach 100 percent coding of address lists. One of these stated a belief that there are still addresses without a ZIP+4 code and states that not all the data in the ZIP+4 database is correct. Five commenters questioned the ability of the Postal Service to add a ZIP+4 code to mailpieces that a mailer could not ZIP+4 code.

The Postal Service recognizes that mailers may never reach 100 percent ZIP+4 coding of their mailing lists, even though the Postal Service has assigned ZIP+4 codes to every address in the United States, including its territories and possessions (see DMM 111.2). However, experience shows that the Postal Service is able to ZIP+4 barcode a large percentage of mail that mailers could not match to the ZIP+4 database. There are several reasons for this. The matching logic used by Postal Service MLOCRs will differ from the matching logic used by the mailer's software, even when the mailer's software is CASS certified. Also, the Postal Service updates the ZIP+4 directories on its MLOCRs on a weekly basis. By contrast, mailers are required to match their lists with the ZIP+4 file only once every 12 months using the current Postal Service ZIP+4 file that has been updated to include all applicable monthly or quarterly change transaction files. This means the ZIP+4 information used by mailers may not be as current as the ZIP+4 information used by Postal Service MLOCRs. The ZIP+4 directories used by Postal Service MLOCRs may also have more localized information than appears on the ZIP+4 files used by mailers. Finally, that portion of the mail not ZIP+4 barcoded by mailers and not barcoded by Postal Service MLOCRs will be processed on Postal Service remote barcode system (RBCS) equipment to apply a barcode. This equipment is available only at Postal Service GMFs. Therefore, 5-digit presorted mail going to associate offices and stations and branches which is not prebarcoded will bypass this potential for barcoding and either be handled manually or will have to be transported back to the GMF for automated processing.

Four commenters questioned the implementation date for the 100 percent ZIP+4 Barcoded rate requirement at the 5-digit ZIP+4 Barcoded rate level. They each indicated that since capital expenditures and systems redesign will be necessary to implement this change, a long time frame is necessary. Some suggested March 1993, one September 1992, and two indicated it should be tied in with significant deployment of barcode sorters in delivery units. One commenter indicated this proposal is "too early for the automated mailing industry" and feels it should be delayed until mailers are better prepared and more experienced, and the Postal Service can provide greater rate incentives to compensate for the additional processing time required by the proposed changes. One commenter indicated at least 60 days' advance notice would be required to implement this change and one commenter stated at least 6 months advance notice would be needed to make the required systems changes.

In recognition of mailer concerns, and to allow for an appropriate transition, the Postal Service, has made December 20, 1992, the implementation date for this requirement for the tray-based presort options in 563. However, for mailings prepared in accordance with the new package-based presort requirements in 564, the 100 percent ZIP+4 Barcoded requirement for the 5-digit presort tier is implemented immediately and must be met whenever such mailings are made. Since mailers will be required to make revisions to their software, systems, and operations in order to implement the new packaged-based regulations, the Postal Service does not feel that "transition" time is necessary for these mailers.

5. Letter-Size Pieces Too Large To Fit in Trays

Ten commenters noted that some mail that complies with the letter size dimension criteria of chapter 5 is too large to fit in USPS sleeved trays. One of these commenters asked whether these pieces would be denied letter-size ZIP+4 Barcoded rates when the requirements to tray mail in accordance

with chapter 5 become mandatory. He further asked whether these pieces would be reclassified as flats. Three of these commenters indicated that mail pieces measuring 6 inches by 9 inches that are placed in trays will be crushed when the tray is sleeved. One of these commenters stated that mail measuring over 6 inches in height must be laid flat in trays. Another stated that mail over 10 inches in length must be placed horizontally in trays. One commenter stated that inability to place oversized pieces in trays in the manner prescribed for smaller pieces will affect a mailer's ability to comply with the proposed facing requirements. Another commenter stated that the Postal Service must address this problem since flat tubs or sacks will no longer be permissible for sorting automation rate mail when chapter 5 sortation becomes mandatory.

The Postal Service recognizes that there are pieces that meet the size requirements for automation rates but that do not fit into Postal Service trays in the usual manner. Accordingly, new regulations have been added to 561.42 and 561.43 concerning how these pieces must be placed in trays and when trays containing such pieces will be considered to be full trays.

6. Limited Use of One-Foot (Half) Trays

Eight comments were received opposing the proposal to limit use of 1-foot trays within automated rate mailings and to require mailers to provide these trays. Six commenters stated that it will be too expensive for mailers to produce the 1-foot trays. One of these commenters stated the expense will include retraining their personnel on revised traying procedures that they must develop if they are denied use of 1-foot trays. Four commenters indicated that the inability to use 1-foot trays will disallow qualification of mail. One stated that their qualification will be affected by 10 to 15 percent. This commenter stated that by using the one-foot trays to prepare mail under the tray-based ZIP+4 barcoded regulations they currently have virtually no residual, and that requiring 2-foot trays will push more of their mail into residual, which has the additional rate disadvantage effect of making those pieces ineligible for destination entry discounts. One mailer stated that the inability to use 1-foot trays has an even greater rate disqualification impact when combined with the new requirement for 100 percent ZIP+4 barcoded mail at the 5-digit ZIP+4 barcoded rate sortation level. Two commenters indicated that limiting use of one-foot trays will result in additional handlings by the USPS. One of these commenters stated that 5-digit mail that could fill a 1-foot tray and go directly to the 5-digit destination will have to be placed in a 3-digit or SCF tray with other mail and then undergo further sortation to the 5-digit level. Another commenter made the same point about having to combine 3-digit mail that could fill a 1-foot 3-digit tray with other mail to an SCF location in a 2-foot tray. This commenter also pointed out that when this mail must be moved from a full 1-foot tray to a less-than-full SCF tray it causes the mailer the additional work of packaging and labeling the mail in the less-than-full SCF tray. One commenter requested that the Postal Service allow postcard mailers to use 1-foot trays since postcards are thinner and greater numbers are needed to qualify mail as full trays. One commenter indicated that the Postal Service must already have procurement, storage, and distribution capabilities for its 1-foot trays and therefore cannot understand the Postal Service's logic in citing inventory control problems as a reason for limiting use of these trays. This commenter further stated that the Postal Service in general has poor inventory control over mailer supplies as evidenced by shortages of sacks and stamps currently required to prepare mailings. Three commenters indicated that requiring mailers to produce their own trays will cause the Postal Service more work in returning the trays to mailers and in policing mailer adherence to tray standards. One of these commenters remarked that the Postal Service would be getting a "windfall" in free reuse of mailer purchased trays. Another commenter stated that requiring mailers to provide substantial packaging materials unlawfully shifts costs to mailers without offsetting rate relief and that this will require rate case action.

Based upon these comments and a review of the operational advantages and disadvantages to the Postal Service of using 1-foot trays, the Postal Service has determined that it is in the best interest of both the Postal Service and mailers to phase out the use of 1-foot trays entirely. The comments uniformly indicated that mailers cannot afford to purchase 1-foot trays themselves. In addition, based on mailer comments, the Postal Service is concerned that permitting mailers to provide the trays themselves and to obtain trays from the Postal Service on an "as available" basis would result in inequitable treatment, since some customers may be able to afford the purchase of 1-foot trays and others may not, and customers in some geographical locations may be able to obtain 1-foot trays from their local post offices whereas customers in other areas may not. This potential inequity was one of the reasons why the proposed regulations would have entirely disallowed 1-foot trays in tray-based mailings.

The Postal Service has determined to discontinue procurement of 1-foot trays for any purpose, based upon a determination that it has no internal need for these trays. In addition, maintaining an inventory of several different tray sizes imposes a significant burden on the Postal Service, as does disposing of trays for which the Postal Service has not further use.

Accordingly, the Postal Service hereby withdraws its proposal to allow mailers using the package-based option for ZIP+4 barcoded mail to use 1-foot trays provided by the mailer. Effective immediately, mailings presented in accordance with that option may only be presented in 2-foot trays. Since qualification of mail presented in accordance with this option is not related to tray size, this decision should not have any impact on the rates paid by mailers.

At the same time, the Postal Service recognizes that the decision to disallow the use of 1-foot trays under the tray-based options could affect some mailers who are currently presenting mail in 1-foot trays. Therefore, to ease the effect on those mailers, and to allow an appropriate transition time in which mailers can evaluate the benefits of presenting their mail in accordance with a different option, the prohibition on 1-foot trays in mailings submitted under the tray-based options in DMM 562 and 563 will not go into effect until December 20, 1992. Until that date, mailers may continue to use Postal Service provided 1-foot trays and sleeves for mailings submitted under the tray-based options if they are able to obtain them; however, the Postal Service will not guarantee the availability of 1-foot trays and sleeves to any customer during this phase-out period. Mailer-procured 1-foot trays may not be used during this phase-out period. The Postal Service believes that the long-term effect of this policy will be minimal, because of the availability of other options for presenting this mail.

7. Mandatory Use of Trays

One commenter stated that the Postal Service must be able to provide sufficient equipment to support the change from sacks to trays and should survey mailers to determine their equipment needs.

Four other commenters expressed concerns about the space needed by trays. One commenter indicated that trays require increased storage space in mailer facilities, which will increase mailer costs. Each of the four commenters indicated that trays use space in trailers less efficiently than sacks. Two of these commenters stated that because trays in APCs or trays on skids use more space in trailers than sacks, trailer density will be so low that mailers will not be able to afford to take advantage of drop shipment discounts. One of these commenters suggested that APCs should be made stackable to fill trailers floor-to-ceiling. Another of these commenters indicated that 40,000–45,000 pounds of sacked mail can be loaded in a trailer as opposed to 20,000 pounds of trayed mail. One commenter stated that this less efficient use of space by trayed mail will also affect the Postal Service and projected that the number of postal trailers would double. This commenter also stated that BMCs are not designed to handle trays.

One commenter indicated that the Postal Service's cardboard trays have little strength and skids of trayed mail cannot be stacked. One commenter indicated that the Postal Service needs to publish rules concerning palletization of trays before making trays mandatory.

One commenter indicated that additional costs for labor, strapping, materials and transportation evolve from required use of trays. Another commenter estimated labor costs to construct the trays to $250,000 per year. One commenter stated that the new traying regulations, by permitting less-than-full SCF trays, will result in a greater number of trays in the mailing because of the reduction of the number of pieces per tray. Another commenter noted that mailers will be required to use more trays than sacks.

There are great advantages to the Postal Service in receiving trayed mail. First of all, traying is the only method of preparation that ensures the mailpieces will not become bent or torn during transportation and handling. The good condition of mailpieces is extremely important to assure capture of savings associated with automation discounts. Postal Service mail processing centers are configured to handle trays and USPS distribution operations prepare mail in trays. Trays can be transported via take-away systems and directed to specific operations with minimal labor costs. By contrast, sacks must be sorted and "dumped," and bundles in the sacks must be "thrown off" and trayed. All automation-compatible mail must be trayed before it can be inducted into the automated equipment.

The Postal Service does not believe that increased use of trays as opposed to sacks by mailers will result in an increase in the number of Postal Service trailer shipments needed, as most Postal Service trailer shipments are not currently at maximum capacity. It may be true that mailers can bedload more mail in trailers using sacks than they can place in trailers using trays. Mailers will have to take the amount of mail that can be placed in a trailer into consideration when determining which discounts, automation or drop shipment, are most beneficial to them. The Postal Service is considering regulations that will allow second- and third-class mailers to palletize trays, which may minimize the space usage problems for mailers. The Postal Service believes that the benefits of requiring trays for automation-rate mailings more than offset any possible disadvantage to mailers. Accordingly, the Postal Service has decided to move forward with its plans to require all automated rate mailings to be trayed in accordance with Chapter 5 requirements. As explained above, the Postal Service currently plans to make the use of Chapter 5 preparation rules mandatory on December 20, 1992.

8. Definition of a Full Tray

Two commenters stated that the new definition of a full tray will eliminate the ambiguity of the previous definition and will provide a good practical guideline. Two other commenters indicated that the new definition still leaves doubt concerning when a tray is full, and could lead to problems when acceptance clerks and mailers disagree as to whether trays are full. These commenters indicated that the Postal Service should give a definite number of pieces as the requirement for a full tray.

A total of four commenters requested that a minimum number of mailpieces be used to determine when a tray is full. Two of these commenters indicated that the full tray requirement is not suited to computer processing because it is a subjective requirement. Another of these commenters more specifically stated that when mailings contain pieces of multiple sizes it is difficult to determine when a tray will be full, or to provide a report of what goes into overflow trays, to predict tray levels, and to predict proper optional endorsement lines. Another commenter stated that this definition does not lend itself to computer preparation of mail since it depends on after-the-fact manual inspection of finished trays to determine if they are full, and that this is inconsistent with system certification efforts.

One commenter suggested that the full tray requirement be eliminated to allow MLOCR preparation, stating that it is not possible to predict when a 3-digit tray will be full when processing multiple-size mailpieces on MLOCRs.

Four commenters indicated that mailpieces that are higher than the height of a USPS tray must be tilted in order to place a sleeve on the tray, and that the definition of a full tray will not work for this mail because mail must be removed from the tray to allow for the tilting of the pieces. One of these commenters suggested that the Postal Service needs larger trays. Another of these commenters stated that the Postal Service needs a solution for 6 x 11 inch envelopes and needs to know if new trays will be introduced.

The Postal Service recognizes that it is difficult to predict when a tray will be filled when preparing mailings composed of multiple-size mailpieces. To alleviate this situation, the Postal Service has already revised the "full tray" requirement so that trays that are only ¾ full will be considered "full trays." This ¼-tray leeway can be used by programmers to allow for some margin of error when predicting when a tray will be "full" in a given mailing. In addition, for ZIP+4 barcoded mailings, the new package-based option in DMM 564 allows rate qualification to be based upon package sizes of 10 or more pieces to a 5-digit ZIP Code and 50 or more pieces to a 3-digit ZIP Code, even in SCF trays that are less than full. This will allow documentation accompanying such mailings to be accurately prepared based upon piece counts in advance of the actual filling of trays.

Although some manual intervention may be required to meet the definition of ¾ of a tray in certain mailing situations, the Postal Service believes that the burden will not be significant, given the ¼-tray leeway discussed above. The full tray requirement is needed by the Postal Service to preclude an overabundance of mailer-prepared trays that are less than full, because it is not as efficient, on a cost per piece basis, to transport less-than full trays since a less-than-full tray occupies the same amount of space as a full tray in a truck or airplane. The Postal Service is allowing less than full trays at the SCF level within its package-based ZIP+4 Barcoded rate sortation option in 564 so that mailers may qualify any group of 10 or more ZIP+4 barcoded pieces for a 5-digit ZIP Code area for 5-digit ZIP+4 Barcoded rates, and qualify any group of 50 or more pieces for a 3-digit ZIP Code area for 3-digit rates. It is not, however, willing to increase its transportation costs by allowing less than full trays at all sortation levels under all sortation options.

Use of a specified number of mail pieces to determine when a tray is considered full is not practical for the Postal Service because of the wide variety of mailpieces in the mailstream. A specified piece count would not always guarantee that trays would be sufficiently full to avoid slippage of pieces in a tray and to ensure the adequate usage of space during transportation that is critical to the Postal Service for the reasons described above.

For the above reasons, the Postal Service has determined to adopt the "¾-full" definition included in the proposed rule, with modifications, rather than adopting a specified piece count as a definition. The ¾ full definition set forth in 561.43 of the final regulations is modified from that in the proposal to provide for new definitions of full trays for mailings containing pieces that exceed the height and/or the width of trays, and to allow trays to be tilted at not less than a 45 degree angle (as opposed to a 90 degree angle) to determine if the ¾ full criteria is met.

9. Sleeving and Banding of Trays

Eleven comments were received regarding the requirement to sleeve and band trays in automated rate mailings.

Eight commenters stated that this requirement will increase mailer costs due to increased labor, equipment, materials, and space for the equipment. One commenter indicated that his company would need to add two full-time employees and three strapping machines, amounting to 45% of the planned savings barcoding would have returned. One commenter stated that current equipment used to strap flats could not be used for banding trays. Therefore, his company would need new equipment and a greater number of machines. He estimated this would cost an initial outlay of $500,000 plus yearly maintenance and supplies.

Two commenters stated that they agreed with the sleeving requirement but disagreed with the banding requirement. One of these commenters stated that sleeving should be sufficient to keep the contents of the tray intact.

Two commenters stated that the Postal Service will have to break bands to verify mail and consolidate less than full trays, and that the Postal Service is equipped to band trays before dispatch, whereas mailers are not.

One commenter stated that if mailers are required to band trays, banding material other than plastic should be allowed.

One commenter stated that mailers need to know the size of any new trays the Postal Service may develop to handle mail exceeding current tray dimensions before they can buy appropriate banding equipment.

One commenter suggested that strapping sleeved trays on pallets would be more effective than banding each sleeved tray.

Trays must be banded to ensure that they remain intact during handling and transit. Sleeving alone is not adequate under most circumstances to ensure that the trays remain intact. At BMCs, for example, trays will be processed on sack sorters and will slide down a chute. However, the Postal Service recognizes that it may be costly for its customers to band trays and has decided not to impose this requirement for most mailing prepared under chapter 5. The final regulations require strapping of trays only when mailings are hauled directly from a mailer's plant (either on Postal Service or on mailer transportation) to a BMC, ASF, or AMF. The Postal Service does not have banding equipment at BMCs, ASFs, or AMFs. Therefore postal personnel at these facilities will not be capable of banding trays of mail brought to one of these locations directly from a mailer's plant. The fact that the Postal Service may have to remove bands from a few trays during verification is not sufficient reason to eliminate the requirement to band mail entered at BMCs, ASFs, and AMFs. Banding of trays in other instances will be recommended but not required, except that banding is not recommended for trays that are for distribution at the post office of origin. Whenever trays are banded, the Postal Service will also retain the requirement to use plastic strapping to secure sleeved trays, since metal banding causes safety problems and is difficult to remove.

The Postal Service has decided to consider regulations governing palletization of trays of letter-size pieces. If deemed to be appropriate, such regulations will be published at a later date. It is likely, however, that such regulations would require banding of individual trays placed on BMC pallets.

10. Mailer Suggestion To Allow Mixed ADC Trays in Chapter 5 Preparation

The chapter 5 presortation regulations require preparation of only 5-digit, 3-digit, and SCF trays for qualifying mail. (There are no ADC or Mixed ADC trays, nor State or Mixed States trays.) Proposed regulations for ZIP+4 presort and for package-based ZIP+4 barcoded regulations require mailers to prepare SCF trays that are less than full. One commenter indicated that the traying requirements in proposed DMM 562.324, 563.132, 563.232 and 563.332 are beneficial in this regard in that mailers will not lose any presort qualification due to less than full trays. The commenter also voiced a concern that mailers could have considerable numbers of less-than-full trays and that post offices may choose to consolidate these trays before dispatching them. The commenter therefore suggests that Mixed ADC trays be allowed in chapter 5 mailings if these trays benefit both a mailer and a local post office.

The Postal Service has decided not to permit mailers to consolidate 5-digit or 3-digit packages into Mixed ADC trays. By retaining a requirement that this mail be trayed to the proper SCF, the Postal Service is able to determine how to consolidate it most efficiently, and to save a sortation step in consolidating this mail with other mail for the same SCF, ADC, or state. Mail consolidated by mailers in a Mixed ADC tray would have to be dumped and sorted before it could be consolidated with other mail for the same destination.

11. Tray Label Requirements

One commenter indicated that showing the name of the mailer and the mailer location on tray labels should pose no hardship and will provide better information to the Postal Service. Another commenter disagrees with showing the name of the mailer on the tray labels for security reasons (mailings of credit cards). Showing the name of the mailer on the tray label is a long-standing requirement for First-Class Mail, and has been required for chapter 5 preparation of all classes of mail since chapter 5 was instituted in February of this year. Although this requirement has been in effect for years for First-Class Mail and the Postal Service has never had complaints of any security problems, the security of all mail is of great importance. Accordingly, the Postal Service will contact the commenter further concerning this matter, and if warranted, explore this concern with other mailers. In the meantime, the Postal Service will continue to require the name of the mailer and the mailer location on tray labels for automated rate category mailings.

12. Overflow Trays

One commenter stated the overflow tray regulations meet mailer needs. Another commenter stated he would like a definition of an overflow tray. Overflow trays are defined in DMM 561.44.

13. Requirement To Use Rubber Bands When Preparing Packages

Five comments were received concerning this requirement. One commenter stated that packaging mail in less than full SCF trays should not be a problem. One commenter indicated that requiring packaging of mail in overflow trays increases mailer costs and reduces productivity, and that if mail is in sequence and documented it should be enough. One commenter indicated that use of rubber bands results in employee physical ailments in wrist and fingers (carpal tunnel syndrome), which could increase labor, health insurance, and worker compensation costs. One commenter requested clarification as to whether plastic strappings can be used to package third-class mail. One commenter stated that a requirement for rubber bands would cause problems in her company's operations since they use equipment that automatically packages pieces using plastic strapping, and required use of rubber bands would mean they would have to revert to more expensive manual packaging.

The Postal Service needs to have mail in less than full trays secured into packages so that the mailpieces will remain properly faced and oriented during transportation and handling. Plastic strapping is not desirable for use in securing packages for automation rate mailings because it is difficult and time-consuming to remove it before induction into automated equipment, and because it is a potential safety hazard when dropped onto the mailroom floor after removal. By contrast, rubber bands are easy to remove and pose no safety problems. In recognition of mailer concerns, the final regulations require mailers to use either rubber bands or elastic strapping approved by the Postal Service. Approval for elastic strapping will be granted only for material that is strong enough to maintain the integrity of packages during handling, able to stretch and resume its original shape, and elastic enough to allow removal by stretching. Plastic strapping will not be acceptable. These regulations are effective immediately for mailers using the packaged-based option in DMM 564, and for mailers using the new tray-based options in DMM 562.2 and 563.2. Mailers using the current tray-based options in DMM 562.1 and 563.1 will have until March 15, 1992, to meet this requirement.

14. Use of Separator Cards in the 5-Digit Presort Tier of Package-Based ZIP+4 Barcoded Mailings

Nine commenters addressed this issue. One commenter stated that this requirement should be workable. Eight commenters stated that they would like to see this requirement removed.

Four commenters indicated that insertion of separator cards in 3-digit trays to identify mail qualifying for the 5-digit Barcoded rate will cost mailers time and money, and one commenter made the same statement regarding use of cards in SCF trays to identify mail qualifying for the 3-digit rate. One of these commenters stated that placement of separator cards will cost an extra ½ hour of labor per employee. Another of the commenters suggested that it will also cost the Postal Service time and money since the separator cards must be removed and thrown away before the trays are processed on automated equipment. One commenter states the requirement for insertion of separator cards is inconsistent with computer-assisted mail preparation techniques.

Three commenters stated they do not understand the need for separator cards if mail will be sorted on automated equipment. One of these commenters further remarked that a pass on automated equipment will always be more cost effective than manual handling of packages.

One commenter suggested allowing the use of a mark on the top edge of envelopes placed there by inserting and sorting machines to denote package breaks. One commenter stated it appears riffling would be just as effective for manual sorting of packages in these trays. Three commenters stated use of separator tabs is a waste of paper and therefore unnecessarily harms the environment through destruction of trees. One commenter suggested the need for separator cards would be eliminated if the Postal Service allowed 1-foot trays. (Use of 1-foot trays is discussed in section 6, above.) One commenter asked why dividers are necessary if pieces are strapped and banded. One commenter stated that a definition of a separator card or tab should be added to the regulations.

The regulations adopted in this final rule require that within the 5-digit presort tier of a package-based ZIP+4 barcoded mailing, either separator cards or packaging be used to identify the groups of 10 or more pieces to a 5-digit ZIP Code area within full 3-digit and full SCF trays. Separator cards are not required when the pieces are secured into 5-digit packages. The option to package in lieu of using separator cards was added in response to the commenters who indicated that use of separator cards is not compatible with their automated mailroom operations. Although not recommended, the option to prepare 5-digit packages in full 5-digit trays within the 5-digit presort tier of package-based mailings, as well as the option to prepare 3-digit packages in full 3-digit and SCF trays within the 3-digit presort tier of the mailing was also added to the final regulations. This will allow mailers to prepare all qualifying pieces in a package-based ZIP+4 Barcoded mailing in a uniform manner. However, the packaging must be done by means of rubber bands or elastic strapping as discussed in section 13 above.

Separation of mail to different 5-digit ZIP Code areas by means of separator cards or packaging within 3-digit and SCF trays in the 5-digit presort tier of a package-based ZIP+4 barcoded mailing will allow the Postal Service to perform manual consolidation of that mail in 5-digit trays prior to performing incoming secondary sortations. This will be done where it is cost effective and in instances where the Postal Service does not have barcode sorting capacity. For example, in a 3-digit tray containing mail for only two 5-digit areas, postal employees could sort the mail into two trays and send each to the proper incoming secondary sort. Otherwise the entire tray would have to be run through a 3-digit barcode scheme to re-sort the pieces to 5-digits. In some instances, this manual separation could also result in more expeditious delivery of the mailpieces.

The final rule also requires separator cards to delineate 100-piece groups in the residual portion of a mailing where the physical separation option is used. This will enable the Postal Service to verify that the appropriate postage has been paid on residual mail. Otherwise, use of separator cards is not required by the final rule.

The suggestion that marks placed on the top edge of envelopes by inserting and sorting machines be used to denote package breaks instead of separator cards is not adopted. This would require training of a large number of postal employees and is expected to cause confusion where other marks appearing on mailpieces do not represent ZIP Code breaks. Riffling would not be as effective as separator cards in identifying package breaks. With separator cards, postal employees can immediately see where one 5-digit area ends and another begins, and more easily make a decision as to whether manual sortation of the tray will be cost effective.

The final rule clarifies that the separator card must be higher than the height of the highest piece in the mailing, to allow postal employees easily to see

the separator tabs. These requirements will also satisfy the request of one commenter for a definition of a separator card.

Mailers should note that if the required use of separator cards or packaging is a serious problem, they can choose to use the tray-based regulations instead of the package-based regulations. There is no requirement for use of separator cards in the qualifying portion of tray-based mailings (see DMM 562.1, 562.2, 563.1 and 563.2), although packaging of pieces in less than full overflow trays and residual trays (and in less than full SCF trays within 562.2) is required and packaging may be required if pieces exceeding the width of trays are placed sideways in trays as provided in DMM 561.422.

15. Grouping of Mail by ZIP Code Requirements

The requirement to group pieces for the same 3-digit ZIP Code area together within SCF trays existed in the original tray-based ZIP+4 and ZIP+4 Barcoded regulations. This requirement was carried forward in the proposed rule for tray-based mailings and was extended to the new package-based ZIP+4 barcoded regulations. The grouping requirements were adopted in the final regulations.

One commenter stated that the requirement to group mail to the same ZIP Code areas together may cause acceptance problems for presort bureaus that submit one mailing statement when mail is actually given to the post office twice daily.

Where a mailing is submitted in more than one installment, the grouping requirements would apply separately to each part of the mailing tendered to the Postal Service. For example, in the portion of a package-based mailing qualifying for the 3-digit ZIP+4 Barcoded rates, mail for ZIP Code area 606 meeting the 50-piece grouping requirement could be submitted in the morning and additional groups of 50 or more pieces for 606 could be submitted in the evening. In each case, however, the 50-piece minimum requirement per ZIP Code area would have to be met to qualify for 3-digit ZIP+4 Barcoded rates. The 50-piece minimum could not be met by splitting one 50-piece group between the two submissions (i.e., 25 pieces in the morning and 25 pieces in the evening would not meet the 50-piece requirement for the 3-digit ZIP+4 barcoded rate). Similarly, the 10-piece minimum per group requirement would have to be met in all cases for pieces qualifying for the 5-digit ZIP+4 Barcoded rates.

16. Definition of a Mailing for Package-Based ZIP+4 Barcoded Sortation

Six commenters expressed concerns over the definition of a "mailing" for the package-based preparation requirements. One commenter stated in general that the regulations are complex and easily misunderstood, particularly the three package-based options. One commenter stated that allowing mailers to prepare mail as one mailing under proposed DMM 563.4 is helpful. One commenter expressed concern over the number of "mailstreams" being created in the proposed rule, particularly by making package-based 5-digit barcoded rate mailings a separate mailing. He stated that this causes extra mailing statements, further compounding the mailing statement problems created with drop shipment requirements and that if a mailer is not on optional procedures it increases weighing as well as paperwork.

Two commenters stated that the regulations did not clearly indicate what constitutes a mailing. One of these commenters asked whether a mailer who starts with one mailing that meets the 85/15 requirements and extracts the 100-percent barcoded 5-digit pieces, can then include the remaining pieces (which no longer meet the 85/15 requirement) in the 3-digit trays as part of the same mailing. One commenter stated that he read the regulations to mean that mail prepared under DMM 563.2, 563.3 and 563.4 is a single mailing.

Two commenters wanted to know what to do with residual mail from 5-digit mailings. One is a metered mailer that expressed concern because these pieces will have been metered at the 5-digit barcoded rate, but will not be permitted in the 5-digit mailing. The other uses manifesting and wanted information on how the nonbarcoded pieces should be recorded on the manifest when they are rejected from the 5-digit portion of the mailing.

In response to mailer concerns, the package-based options in proposed DMM 563.2, 563.3, and 563.4 have been consolidated in this final rule into a single package-based mail preparation option in DMM 564. A single mailing under DMM 564 may consist of a 5-digit presort tier, a 3-digit presort tier, and a residual/basic presort tier. However, mailers may opt to submit the 5-digit presort tier as a separate mailing or to submit a 3-digit and residual/basic presort tier as a separate mailing under DMM 564. This will allow mailers to meter all pieces in a mailing that contains all three presort tiers at the 5-digit ZIP+4 Barcoded rate. Pieces in the mailing that cannot be included in the 5-digit presort tier must be included in the 3-digit or residual/basic presort tiers as appropriate.

17. Documentation by Tray

One commenter expressed opposition to the requirement to provide separate counts for 3-digit and SCF trays in a tray-based mailing. The commenter stated that OCRs currently cannot provide counts by tray.

The tray-based ZIP+4 Barcoded regulations in Chapter 5 have contained a requirement to document pieces by tray or by tray sortation level since they were placed in the DMM as part of rate case implementation effective February 3, 1991. Since rate eligibility for tray-based rates is based upon the type of tray in which a piece is placed, and the documentation must indicate the proper postage to be paid for a mailing, the Postal Service cannot waive the requirement to document the pieces by tray under this preparation option. The fact that some mailers stated they could not document pieces by tray was one of the primary reasons the package-based ZIP+4 Barcoded rate preparation options that are part of this rulemaking were proposed. Under the package-based preparation requirements, both the rates and the documentation required to support mailing statements are based upon the number of pieces in a package rather than the tray in which they are placed.

18. Residual/Basic Rate Mail—Addition of ZIP Sequencing and Documentation Requirements for Tray-Based Sortation Options

Six commenters addressed these new requirements. Two commenters indicated that this is not a problem. One of these commenters stated that existing software can do this. Two commenters asked why residual mail must be documented since it pays the full rate. One of these stated this will cost mailers more processing time and they will receive no rate compensation. Two commenters asked why residual mail must be sequenced. One of these stated that because this is full-rate mail sortation should not be required. The other stated that this will add additional computer runs and more expense. One commenter requested that a final format be published at least 3 months before the required implementation date.

The exclusion of the residual pieces from the documentation requirements in the original regulations was an oversight. These regulation changes have been adopted to correct that oversight. Mail in the residual/basic portion of automation-based mailings

must be documented because the ZIP+4 coded or ZIP+4 barcoded pieces in this portion of the mailing count toward the overall requirement that at least 85 percent of the pieces in the mailing bear a ZIP+4 code (for ZIP+4 rates) or that 85 percent bear a ZIP+4 barcode (for ZIP+4 Barcoded rates). The sequencing is required to allow the Postal Service to verify that the documentation is accurate. The documentation must be verified to prove that the 85 percent requirements have been met and that proper postage is being claimed on the mailing statement.

It is appropriate to require sequencing of this mail for two further reasons. First, residual mail is part of a presort mailing and as part of a presort mailing requires some level of presort. For example, residual in a Presorted First-Class rate mailing must be presorted in accordance with one of the options listed in DMM 367.5. Second, the ZIP+4 coded or ZIP+4 barcoded pieces in the residual/basic portion of automation-based mailings are eligible for the applicable nonpresorted/basic ZIP+4 rates or nonpresorted/basic ZIP+4 Barcoded rates (nonpresorted ZIP+4 barcoded rates apply only to First-Class mailings at card rates). Also, mailers should note that ZIP Code sequencing is not required if mailers physically separate pieces eligible for each rate into separate trays, and within these trays, mark every 100 pieces with a separator card. The counts from these separations must be included in the summary portion of the documentation. Examples of the documentation required for package-based ZIP+4 Barcoded rate mailings appear in this final rule. The Postal Service plans to publish sample formats of the documentation requirements for tray-based mailings in the near future. This does not apply to the current tray-based options, which will be available only until March 15, 1992.

C. Postage Payment Regulations

One commenter indicated that the Postal Service would be better served by not allowing mailers to meter at the lowest rate in the mailing and then pay the Postal Service the difference, to preclude possible undetected postage deficiencies. The commenter recommends requiring that qualification documents be produced from automated equipment and not from hand counts. The commenter further stated that a better option might be to require that the Presort rate or highest rate in the mailing be affixed to each piece and have the mailer prove what the Postal Service owes the mailer, or, alternatively, require that all pieces be metered at the exact rate.

It is a long-standing practice of the Postal Service to allow mailers to meter mailings at the lowest rate in the mailing for which any mailpiece qualifies and to provide documentation that will show the amount of additional postage owed. The Postal Service does not believe that this practice is resulting in an undue number of postage deficiencies and believes that a change in this long-standing practice would be a hardship to many mailers. Accordingly, the Postal Service will continue to rely on postage verification procedures at the time of acceptance to discover short-paid mailpieces within presorted mailings.

One commenter requested that the words "unless refund for postage added procedures" be given more emphasis, such as bold type or underlining, in proposed DMM 382.4a and 661.324a. The Postal Service does not feel that this is necessary in DMM 382.4a. The reference to value added refund procedures was deleted from Chapter 6 in the final regulations since refund for value added procedures in DMM 147.42 do not apply to third-class mail at the current time. The Chapter 6 reference in the proposed rule was an error.

D. Comments Not Related to the Proposed Rule

The Postal Service received a number of comments that did not relate to the proposals contained in the proposed rule. The Postal Service has decided to address those comments in a limited fashion.

One commenter stated he does not like the procedures for value added refunds that assess postage penalties for presort errors. The Postal Service has no plans at the present time to eliminate the procedures established for adjusting the amount of refund claimed by the mailer.

One commenter indicated concern with the requirement for fully standardized addresses. This commenter stated he had legal concerns with changing information supplied by the policyholder in the address block. The Postal Service revised its regulations effective September 1, 1991, to require standardized address formats as opposed to fully standardized addresses for ZIP+4 rate mailings. Neither standardized addresses nor standardized address formats are required for ZIP+4 Barcoded rate mailings although standardized addresses are recommended.

One commenter stated that submission of Form 3553, Coding Accuracy Support System (CASS) Report, with every mailing is unnecessary paperwork and should not be required if the mailer can prove that an adequate ZIP+4 maintenance process is in place. The Postal Service is considering various ways it might certify such ZIP+4 update procedures.

One commenter stated the requirement for a correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address of ZIP+4 barcoded pieces should be deleted since it causes problems for users of multi-line OCRs. The Postal Service recognizes that this requirement could cause some mailpieces to be assessed errors during presort verifications where the numeric ZIP Code on the piece is found to be incorrect, even if the barcode on the mailpiece is correct. However, the Postal Service has a strong need for complete and correct addresses on mailpieces and is unwilling at the present time to permit incorrect ZIP Codes on mailpieces paid at barcoded rates. The Postal Service is continuing to study this matter.

One commenter wanted guidelines on delivery point barcodes and stated mailers cannot be given sole responsibility for eliminating default codes. Guidelines for preparing delivery point barcodes appear in DMM 551.12. The rules concerning use of default codes for high-rise buildings with apartment or suite ranges, for rural routes with box number ranges, etc., were relaxed effective September 15, 1991. Mailers will have at least until September, 1993, before apartment numbers will be required in addresses in order to qualify for automation based rates.

Two commenters wanted conflicting regulations concerning optional endorsement line placement and placement of barcodes in the address block clarified. One of these commenters indicated a preference that the barcode be allowed to be the topmost line. Effective October 3, 1991, DMM regulations were revised to indicate that the barcode may be placed above the optional endorsement line.

One commenter stated that the Postal Service should give additional training to acceptance personnel. For example, he cited that one acceptance clerk believes that 2.0 ounces is the maximum weight for automation rates. He felt that the complexity of the rules means training is needed. The Postal Service is continually evaluating its training needs and will do so with regard to these new requirements for automation rate mailings.

One commenter stated his company needs additional time to comply with DMM 551.731, concerning the movement

of inserts within envelopes. He stated that a redesign of statements and the statement system to comply with these requirements is needed before they can comply and suggested a January 1994 implementation date for this requirement. Another commenter indicated the regulations will require a redesign of warrant and envelope stock and that they also will need until January 1994 to comply. The regulations these commenters are referring to were adopted in February, 1991, and were relaxed on August 8, 1991, to permit barcodes printed on inserts and appearing through barcode windows in the lower right clear zone to appear anywhere within the barcode clear zone (as opposed to within the more restrictive barcode read area). No further changes to this requirement are anticipated. Mailers must currently comply with these requirements to qualify for ZIP+4 Barcoded rates.

One commenter wanted an interpretation of the role AMF and non-AMF sites will have on sortation requirements and postage discounts. The only correlation between AMF sites and the preparation requirements for automation-based rates is that trays must be banded with a plastic strap in mailings that are hauled directly from a mailer's plant to an AMF (or to a BMC or ASF).

E. Changes to the Proposed Regulations Not Based Upon Mailer Comments

1. A new section 545.7 was added to the OCR readability requirements for mail qualifying for ZIP+4 (nonbarcoded) rates. This section essentially restates the information in DMM 552 that mailpieces with barcode windows in the lower right portion of the mailpiece, through which either no barcode appears or a 5-digit barcode appears, are not eligible for ZIP+4 rates. Placing this regulation under DMM 540 will clarify the requirements of that section with respect to barcode windows.

2. The regulations for barcoded rate mailings concerning residual trays and their documentation were revised to clarify that trays containing mail qualifying for the ZIP+4 rates must also meet the requirements of 540 in addition to having a ZIP+4 code.

3. All general packaging and traying requirements were relocated in 561.

4. A requirement that package-based ZIP+4 barcoded documentation must be presented in the format described in 564.62 and must contain column headings showing the rate for which the pieces qualify was added. This will avoid confusion at acceptance over the interpretation of documentation submitted with mailings.

5. An additional option for preparing residual mail was added for package-based ZIP+4 barcoded mailings. This new option allows mailers separately to tray residual mail in 3-digit Zip Code sequence and submit documentation to support the number of barcoded pieces and rate qualification of the pieces in those residual trays.

6. A prohibition against tray labels being taped to trays was added as well as a clarification concerning the size and color of tray labels.

7. The reference to DMM 540 in the first sentence of both DMM 562.11 and 562.21, that pertains to the requirement that 85% of the pieces in a ZIP+4 rate mailing must be ZIP+4 coded was deleted to avoid the possible misinterpretation that only 85% of the pieces in a ZIP+4 rate mailing must meet the requirements of 540. Both 324.51 and 628.23 require that all pieces in a ZIP+4 mailing meet the OCR readability requirements of 540.

8. The sentence, "If all pieces in the mailing do not bear postage at the same rate, or if different amounts of additional postage are due, the summary must further detail the number of pieces at each postage amount or at each amount of additional postage due.", was deleted from the summary of the ZIP Code documentation options for all tray based regulations. The postage payment requirements for automated rate mailings are listed in 382 for First-Class Mail, and in DMM 661 for third-class mail. All mailings must conform with the provisions in 382 or 661 as appropriate. Accordingly, this sentence is not necessary and might be construed to imply that some other postage payment options may be permissible for Chapter 5 mailings.

In view of the considerations discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. The implementing Domestic Mail Manual regulations in chapters 3, 5, and 6, for the ZIP+4 and ZIP+4 Barcoded Rate presort requirement changes are set forth in the following exhibit. The changes to DMM issue 40 within the Exhibit are marked with dark vertical lines (change bars).

BILLING CODE 7710-12-M

EXHIBIT

Domestic Mail Manual

382 Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP+4, Nonpresorted ZIP+4 Barcoded, ZIP+4 Presort, 5-Digit ZIP+4 Barcoded, and 3-Digit ZIP+4 Barcoded Rates

382.1 Method of Payment. Postage on mailings made at carrier route First-Class, Presorted First-Class, nonpresorted ZIP+4, ZIP+4 Presort and ZIP+4 Barcoded rates, must be paid by meter stamps, permit imprints, or precanceled postage. Permit imprints may be used on mailings of nonidentical weight only under the provisions of 145.7, 145.8, or 145.9.

382.2 Exact Postage on Each Piece

382.21 Presort Rates. When precanceled postage or meter stamps are used, pieces must bear postage at the ZIP+4 Presort or Presorted First-Class rate on qualifying pieces and at the full First-Class rate or nonpresorted ZIP+4 rate on residual pieces, except as provided in 382.3.

382.22 Carrier Route Rates. When precanceled postage or meter stamps are used, pieces must bear postage at the carrier route First-Class rate on qualifying pieces. Nonqualifying pieces must bear postage as required in 382.31.

382.23 ZIP+4 Barcoded Presort Rates.

382.231 National Mailings Prepared Under 364.1. When precanceled postage or meter stamps are used, pieces in national mailings prepared in accordance with 364.1 must have postage affixed at the 5-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate, as appropriate, on pieces in the 5-digit presort portion; and postage affixed at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate, as appropriate, on pieces in the 3-digit presort portion; and postage affixed at the nonpresorted ZIP+4 Barcoded rate, the nonpresorted ZIP+4 rate, or the single-piece rate, as appropriate, on pieces in the residual sortation portion.

382.232 National Mailings Prepared Under Chapter 5.

a. Mailings Prepared Under 563. When meter stamps are used, pieces in national mailings prepared in accordance with 563 must have postage affixed at the 5-digit ZIP+4 Barcoded, ZIP+4 Presort, or Presorted First-Class rate if in a 5-digit tray; the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, or Presorted First-Class rate if in a 3-digit or SCF tray; or at the nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, or single-piece First-Class rate if in a residual tray. When precanceled postage is used, the mailer may affix postage at the rates for metered postage prescribed above when precanceled stamps of those denominations are available. When the appropriate denominations of precanceled stamps are not available, mailers may affix a nondenominated precanceled stamp or a precanceled stamp of a denomination less than the applicable ZIP+4 Barcoded rate, following the procedures in 382.31d(2)(a)(iii) or 382.33b(2)(a)(iii).

b. Mailings Prepared Under 564. When meter stamps are used, pieces in national mailings prepared under 564 must have postage affixed at the 5-digit ZIP+4 Barcoded rate when in the 5-digit presort tier of the mailing; postage affixed at the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, or Presorted First-Class rate as appropriate when in the 3-digit presort tier of the mailing; and postage affixed at the Nonpresorted ZIP+4 Barcoded rate, the Nonpresorted ZIP+4 rate, or the single-piece First-Class rate when in the residual portion of the mailing. If precanceled postage is used, the mailer may affix postage at the rates for metered postage required above when precanceled stamps of those denominations are available. When the appropriate denominations of precanceled stamps are not available, mailers may affix a nondenominated precanceled stamp or a precanceled stamp of a denomination less than the applicable ZIP+4 Barcoded rate, following the procedures in 382.31d(2)(a)(iii) or 382.33b(2)(a)(iii).

382.233 Automated Site Mailings. When precanceled postage or meter stamps are used, pieces in automated site mailings prepared in packages and trays in accordance with 364.3 must have postage affixed at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate, as appropriate, if in the qualifying portion of the mailing; and postage affixed at the nonpresorted ZIP+4 Barcoded rate, the nonpresorted ZIP+4 rate, or the single-piece rate on pieces in the residual portion of the mailing.

382.24 Nonpresorted ZIP+4 Rates. When precanceled postage or meter stamps are used, pieces in nonpresorted ZIP+4 rate mailings must have postage affixed at the nonpresorted ZIP+4 rates for qualifying pieces or at the single-piece First-Class rate for nonqualifying pieces.

382.25 Nonpresorted ZIP+4 Barcoded Rates. When precanceled postage or meter stamps are used, pieces in nonpresorted ZIP+4 Barcoded rate mailings must have postage affixed at the nonpresorted ZIP+4 Barcoded rates for qualifying pieces or the single-piece First-Class rate for nonqualifying pieces.

382.3 Postage at Lowest Rate in Mailing Affixed to All Pieces in the Mailing

382.31 Identical Pieces

a. Presorted First-Class Mailings. When all pieces in a Presorted First-Class mailing paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the Presorted First-Class rate. Additional postage for residual pieces must be paid by means of a meter strip affixed to the back of the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, *Post Office Accounting Procedures*, 524.

b. Carrier Route First-Class Mailing. When all pieces in a carrier route First-Class mailing paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the carrier route First-Class rate. Additional postage

for pieces subject to the Presorted First-Class and full single-piece First-Class rates must be paid by means of a meter strip affixed to the back of the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

c. ZIP+4 Presort Mailings. When all pieces in a ZIP+4 Presort mailing paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the ZIP+4 Presort rate, provided the requirements in 365.33 are met. The additional postage for pieces subject to Presorted First-Class, nonpresorted ZIP+4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the back of the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

d. ZIP+4 Barcoded Presort Rate Mailings

(1) National Mailings Prepared Under 364.1. When all pieces in a ZIP+4 Barcoded national mailing prepared in accordance with 364.1 are paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the 5-digit ZIP+4 Barcoded rate if the documentation requirements in 364.212 are met. Additional postage in the amount documented in accordance with 364.212e for pieces subject to the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(2) National Mailings Prepared Under Chapter 5

(a) Mailings Prepared Under 563

(i) Mailings Containing 5-Digit Trays. When all pieces in a ZIP+4 Barcoded national mailing prepared under 563 are paid by precanceled stamps or meter stamps and are of identical size and weight, the entire mailing may have postage affixed at the 5-digit ZIP+4 Barcoded rate provided the applicable documentation requirements in 563.16 or 563.24 are met. Additional postage in the amount documented under 563.16 or 563.24 for pieces subject to other rates must be paid by a meter strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(ii) Mailings Not Containing 5-Digit Trays. When a ZIP+4 Barcoded national mailing prepared under 563 does not include 5-digit trays (see 563.141 and 563.212), and when all pieces in the mailing are paid by precanceled stamps or meter stamps and are of identical size and weight, the entire mailing may have postage affixed at the 3-digit ZIP+4 Barcoded rate, provided the applicable documentation requirements in 563.16 or 563.24 are met. Additional postage in the amount documented under 563.16 or 563.24 for pieces subject to other rates must be paid by a meter strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(iii) Procedure if Appropriate Precanceled Stamp Not Available. If the appropriate denomination of precanceled stamp is not available, mailers may affix a nondenominated precanceled stamp (if available) or a precanceled stamp of a denomination less than the applicable ZIP+4 Barcoded rate to each piece in the mailing (provided the precanceled stamp does not contain an inappropriate rate marking) and pay additional postage for the difference between the face value of the precanceled stamp and the actual postage for each piece, as documented under 563.16 or 563.24. The additional postage must be paid in the same manner as for metered mailings.

(b) Mailings Prepared Under 564

(i) Mailings Containing 5-Digit Presort Tier. When all pieces in a ZIP+4 Barcoded national mailing prepared under 564 are paid by precanceled stamps or meter stamps and are of identical size and weight, the entire mailing may have postage affixed at the 5-digit ZIP+4 Barcoded rate, provided the applicable documentation requirements in 564.62 are met. Additional postage in the amount documented under 564.62 for pieces subject to other rates must be paid by a meter strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided for in Handbook F-1, 524.

(ii) Mailings Not Containing 5-Digit Presort Tier. When a ZIP+4 Barcoded national mailing prepared under 564 does not include a 5-digit presort tier, (see 564.11) and when all pieces in the mailing are paid by precanceled stamps or meter stamps and are of identical size and weight, the entire mailing may have postage affixed at the 3-digit ZIP+4 Barcoded rate, provided the applicable documentation requirements in 564.62 are met. Additional postage in the amount documented under 564.62 for pieces subject to other rates must be paid by a meter strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(iii) Procedure if Appropriate Precanceled Stamp Not Available. If the appropriate denomination of precanceled stamp is not available, mailers may affix a nondenominated precanceled stamp (if available) or a precanceled stamp of a denomination less than the applicable ZIP+4 Barcoded rate to each piece in the mailing (provided the precanceled stamp does not contain an inappropriate rate marking) and pay additional postage for the difference between the face value of the precanceled stamp and the actual postage for each piece, as documented under 564.62. The additional postage must be paid in the same manner as for metered mailings.

(3) Automated Site Mailings. When all pieces in an automated site ZIP+4 Barcoded mailing prepared in accordance with 364.3 are paid by meter stamps or precanceled postage and are of identical size and weight, the entire mailing may have postage affixed at the 3-digit ZIP+4 Barcoded rate if the documentation requirements in 364.43 are met. Additional postage in the

amount documented in accordance with 364.433a for pieces subject to the ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates, must be paid by means of a meter strip affixed to the back of the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

e. Nonpresorted ZIP+4 Mailings. When all pieces in a nonpresorted ZIP+4 mailing prepared in accordance with 327 are paid by meter stamps or precanceled postage and are of identical size and weight, the entire mailing may have postage affixed at the nonpresorted ZIP+4 rates, provided the documentation requirements in 368.12 for mailings containing 5-digit ZIP Coded pieces are met. Additional postage in the amount documented in accordance with 368.12 for pieces subject to the single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

f. Nonpresorted ZIP+4 Barcoded Mailings. When all pieces in a nonpresorted ZIP+4 Barcoded mailing prepared in accordance with 328 are paid by meter stamps or precanceled postage and are of identical size and weight, the entire mailing may have postage affixed at the nonpresorted ZIP+4 Barcoded rates, provided the documentation requirements in 368.22 for mailings containing pieces prepared without ZIP+4 barcodes are met. Additional postage in the amount documented in accordance with 368.22 for pieces subject to the nonpresorted ZIP+4 or single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

382.32 Nonidentical Pieces at Presorted First-Class or Carrier Route First-Class Rates

382.321 Residual pieces of letter-size mail may have postage affixed at the Presorted First-Class or carrier route First-Class rate under the following conditions:

a. The volume of residual pieces cannot exceed that prescribed in 382.322.

b. The residual pieces must be presented in accordance with 367.5.

c. Payment of additional postage must be made in accordance with 382.323.

382.322 The volume restrictions for residual pieces are as follows:

a. Pieces in the Same Rate Increment. If all residual pieces in the mailing are subject to the same postage rate, there is no limit on the number of residual pieces in a letter-size mailing. If all residual pieces in the mailing are separated into each different postage rate weight increment, there is no limit on the number of nonidentical residual pieces.

b. Pieces Weighing Up to Two Ounces. If all residual pieces in the mailing are not separated into postage rate weight increments and are subject to either the 1- or 2-ounce letter-size rate, the mailing may contain up to 20% residual pieces.

c. Pieces Weighing Up to Three Ounces. If all residual pieces in the mailing are not separated into postage rate weight increments and are subject to the 1-, 2-, or 3-ounce letter-size rates, then the mailing may contain up to 10% residual pieces.

382.323 The additional postage for residual pieces, whether identical or nonidentical, must be paid by means of meter strips affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

382.33 Nonidentical Pieces at All ZIP+4 Presort and ZIP+4 Barcoded Rates

a. ZIP+4 Presort Mailings. ZIP+4 Presort mailings of nonidentical weight pieces may have postage at the ZIP+4 Presort rate affixed to all pieces in the mailing, provided the requirements in 365.33, 366.3, 562.162, or 562.252 are met. The additional postage for pieces subject to Presorted First-Class, nonpresorted ZIP+4, and single-piece First-Class rates, must be paid by means of a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

b. ZIP+4 Barcoded Presort Mailings

(1) National Mailings Prepared Under 364.1. ZIP+4 Barcoded mailings of nonidentical-weight pieces, prepared in accordance with 364.1, may have postage affixed to each piece at the 5-digit ZIP+4 Barcoded rate if the documentation requirements in 364.212 are met. Additional postage in the amount documented in accordance with 364.212e for pieces subject to the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(2) National Mailings Prepared Under Chapter 5

(a) Mailings Prepared Under 563

(i) Mailings Containing 5-Digit Trays. When all pieces in a ZIP+4 Barcoded national mailing prepared under 563 are paid by precanceled stamps or meter stamps and are of nonidentical weight, the entire mailing may have postage affixed at the 5-digit ZIP+4 Barcoded rate, provided the applicable documentation requirements in 563.16 or 563.24 are met. Additional postage in the amount documented under 563.16 or 563.24 for pieces subject to other rates must be paid by a meter strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(ii) Mailings Not Containing 5-Digit Trays. When a ZIP+4 Barcoded national mailing prepared under 563 does not include 5-digit trays (see 563.141 or 563.212), and when all pieces in the mailing are paid by precanceled stamps or meter stamps and are of nonidentical weight, the entire mailing may have postage affixed at the 3-digit ZIP+4 Barcoded rate, provided the applicable documentation requirements in 563.16 or 563.24 are met. Additional postage in the amount documented under 563.16 or 563.24 for pieces subject to other rates must be paid by a meter strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(iii) Procedure if Appropriate Precanceled Stamp Not Available. If the appropriate denomination of precanceled stamp is not available, mailers may affix a nondenominated precanceled stamp (if available) or a precanceled stamp of a denomination less than the applicable ZIP+4 Barcoded rate to each piece in the mailing (provided the precanceled stamp does not contain an inappropriate rate marking) and pay additional postage for the difference between the face value of the precanceled stamp and the actual postage for each piece, as documented under 563.16 or 563.24. If the pieces in the mailing are for more than 1 ounce increment, additional documentation detailing the number of pieces within each ounce increment for each level of rate qualification in the mailing is required. The additional postage must be paid in the same manner as for metered mailings.

(b) Mailings Prepared Under 564

(i) Mailings Containing 5-Digit Presort Tier. When all pieces in a ZIP+4 Barcoded national mailing prepared under 564 are paid by precanceled stamps or meter stamps and are of nonidentical weight, the entire mailing may have postage affixed at the 5-digit ZIP+4 Barcoded rate, provided the mailing includes a 5-digit presort tier and the applicable documentation requirements in 564.62 are met. Additional postage in the amount documented under 564.62 for pieces subject to other rates must be paid by a meter strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(ii) Mailings Not Containing 5-Digit Presort Tier. When a ZIP+4 Barcoded national mailing prepared under 564 does not include a 5-digit presort tier (see 564.11) and when all pieces in the mailing are paid by precanceled stamps or meter stamps and are of nonidentical weight, the entire mailing may have postage affixed at the 3-digit ZIP+4 Barcoded rate, provided the applicable documentation requirements in 564.62 are met. Additional postage in the amount documented under 564.62 for pieces subject to other rates must be paid by a meter strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(iii) Procedure if Appropriate Precanceled Stamp Not Available. If the appropriate denomination of precanceled stamp is not available, mailers may affix a nondenominated precanceled stamp (if available) or a precanceled stamp of a denomination less than the applicable ZIP+4 Barcoded rate to each piece in the mailing (provided the precanceled stamp does not contain an inappropriate rate marking) and pay additional postage for the difference between the face value of the precanceled stamp and the actual postage for each piece, as documented under 564.62. If the pieces in the mailing are for more than 1 ounce increment, additional documentation detailing the number of pieces within each ounce increment for each level of rate qualification in the mailing is required. The additional postage must be paid in the same manner as for metered mailings.

(3) Automated Site Mailings. ZIP+4 barcoded mailings of nonidentical-weight pieces, prepared in accordance with the automated site requirements in 364.3, may have postage affixed to each piece at the 3-digit ZIP+4 Barcoded rate if the documentation requirements in 364.43 are met. Additional postage in the amount documented in accordance with 364.433a for pieces subject to the ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

c. Nonpresorted ZIP+4 Mailings. Nonpresorted ZIP+4 mailings of nonidentical-weight pieces, prepared in accordance with 327, may have postage affixed to each piece at the nonpresorted ZIP+4 rate if the documentation requirements in 368.12 for mailings containing pieces prepared with 5-digit ZIP Codes are met. Additional postage in the amount documented in accordance with 368.12 for pieces subject to the single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

d. Nonpresorted ZIP+4 Barcoded Mailings. Nonpresorted ZIP+4 barcoded mailings of nonidentical-weight pieces, prepared in accordance with 328, may have postage affixed to each piece at the nonpresorted ZIP+4 Barcoded rate if the documentation requirements in 368.22 for mailings containing pieces prepared without ZIP+4 barcodes are met. Additional postage in the amount documented in accordance with 368.22 for pieces subject to the single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

382.4 Neither Lowest Rate Nor Correct Postage Affixed to Each Piece

382.41 General. Where it is not practicable for the mailer to (1) affix the exact postage to each piece as prescribed in 382.2, or (2) to affix the lowest postage rate to all pieces in the mailing as prescribed in 382.3, postage for the mailing may be computed as if the lowest

rate affixed to any piece in the mailing is affixed to all pieces as provided in 382.4b and 382.4c.

Exception: Mailings qualifying for refunds for value added may be submitted under the requirements for that procedure in 147.42.

b. Adding Postage. Additional postage must be based on the difference between the lowest rate affixed to any piece in the mailing and the appropriate rate for each rate level in the mailing. No refund is paid on any piece where postage is affixed at a rate higher than the lowest rate claimed for or affixed to any piece. For example, if a ZIP+4 Barcoded mailing contains pieces bearing ZIP+4 Barcoded rate postage as well as pieces bearing Presorted First-Class postage, ZIP+4 Presort postage, and nonpresorted ZIP+4 postage, postage for the mailing is assessed based on the difference between the ZIP+4 Barcoded rate and the appropriate rate of postage for those pieces not qualifying for that rate based upon the documentation required for ZIP+4 Barcoded rate mailings.

c. Payment. The total additional postage must be paid by means of (1) a meter strip affixed to the back of the Form 3600-PC which is required to accompany the mailing, or (2) through an advance deposit account as provided in Handbook F-1, *Post Office Accounting Procedures*, 524. The applicable check-off must be marked on the Form 3600-PC.

382.5 Mailing Statement. Mailers who qualify for carrier route First-Class, Presorted First-Class, nonpresorted ZIP+4, ZIP+4 Presort, or ZIP+4 Barcoded rates, must complete and submit one of the following mailing statements (signed by the mailer or an authorized agent) with each mailing:

a. Form 3600-R for mail bearing permit imprints.

b. Form 3600-PC for mail bearing meter stamps or precanceled stamps. Form 3600-PC must be submitted in duplicate for mailings metered at the lowest rate for which the difference between postage affixed and the applicable rate is paid through an advance deposit account, as provided in Handbook F-1, 524.

383 Priority Mail Rates

383.1 Single-Piece Rates

383.11 Method of Payment. Single-piece rate Priority Mail postage may be paid by adhesive stamps (see 142 or 143), meter stamps (see 144), or permit imprint (see 145). If a permit imprint is used, the pieces must be of identical weight and, unless all the pieces are in a weight category for which the rates do not vary by zone, the pieces must be separated by zone when presented to the post office. Exceptions to the identical-weight requirement are in 145.7 through 145.9, and 137.274c(2).

383.12 Mailing Statement. A mailing statement is required only if postage is paid by permit imprint.

383.2 Presorted Priority Mail

383.21 Methods of Payment. Presorted Priority Mail must be paid by means of meter postage (see 144) or permit imprint (see 145).

383.22 Identical-Weight Mailings. Mailings consisting of identical-weight pieces may be paid by any of the methods listed in 383.21.

383.221 Metered Mailings. Within metered mailings, postage may be:

a. affixed in the exact amount on each piece, or

b. affixed to all the pieces in the mailing, both qualifying and residual, at the Presorted Priority Mail rates. If this is done, residual pieces must be separated from the qualifying pieces when the mailing is presented to the post office. The additional postage for the residual pieces must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

383.222 Permit Imprint Mailings. Within permit imprint mailings of identical-weight pieces, the qualifying pieces must be separated from the residual pieces when the mailing is presented to the post office. Unless the pieces are in a weight category for which postage does not vary by zone, the sacks in the qualifying and residual portions must be further separated by zone.

383.23 Nonidentical-Weight Mailings

383.231 Postage Affixed Mailings. Each piece in a nonidentical-weight mailing must have the exact postage affixed at the rate for which it qualifies.

383.232 Permit Imprint Mailings. Nonidentical-weight pieces may be paid by permit imprint only if authorized under 145.7, 145.8, or 145.9.

383.24 Mailing Statement. Mailers at the Priority Mail Presort rates must submit the appropriate mailing statement with each mailing, signed by the mailer or an authorized agent.

384 Computation Standards

384.1 Weight

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Chapter 5
Automation-Compatible Mail

510 General

511 Content

This chapter contains the general eligibility requirements for all automation-based rate categories, as well as alternative preparation requirements for certain automation-compatible mailings.

512 Applicability

512.1 General Eligibility Requirements. This chapter contains the eligibility requirements that are common to the Postal Service's automated rate categories for First-, second-, and third-class mail. These general eligibility requirements fall into four categories:

a. requirements concerning the physical characteristics of automation-compatible mailpieces (see 520);

b. requirements for accuracy in addresses and ZIP+4 codes, including a requirement for CASS certification (see 530);

c. additional requirements for nonbarcoded pieces qualifying for ZIP+4 rates (see 540); and

d. additional requirements for barcoded pieces (see 550).

512.2 Specific Eligibility Requirements. In addition to the general eligibility requirements contained in Chapter 5, the mailer must also meet all specific eligibility requirements applicable to the individual rate category. Eligibility requirements for the individual automation-based rate categories are stated in 324, 325, 327, and 328 for First-Class Mail; 424.5 and 424.6 for second-class mail; and 628 for third-class mail.

513 Alternative Preparation Requirements

This chapter also contains alternative requirements for the preparation of automation-compatible letter-size (ZIP+4 and ZIP+4 Barcoded First-, second-, and third-class) mailings (see 560). Mailings may be submitted under the requirements of 560 rather than the corresponding presort requirements in Chapters 3, 4, and 6.

Note: The Postal Service intends to eliminate the presort requirements for ZIP+4 and ZIP+4 Barcoded rate mailings set forth in Chapters 3, 4, and 6 and provide only the presort options in 560 to qualify for ZIP+4 and ZIP+4 Barcoded rates. This change will be made by a *Federal Register* rulemaking process and published in the *Postal Bulletin*. The Postal Service currently anticipates making this change effective in December 1992.

514 Definitions

514.1 Automation-Based Rates

514.11 ZIP+4 Barcoded Rates. The ZIP+4 Barcoded rates include the 5-digit ZIP+4 Barcoded, 3-digit ZIP+4 Barcoded, and nonpresorted ZIP+4 Barcoded First-Class rates; the level A, B, G, H, and J ZIP+4 Barcoded second-class rates; and the 5-digit ZIP+4 Barcoded, 3-digit ZIP+4 Barcoded and Basic ZIP+4 Barcoded third-class rates.

514.12 ZIP+4 Rates. The ZIP+4 rates include the ZIP+4 Presort and nonpresorted ZIP+4 First-Class rates; the level A, B, G, H, and J ZIP+4 second-class rates; and the 3/5 ZIP+4 and Basic ZIP+4 third-class rates.

514.2 Presort Rates. The presort rates include the Presorted First-Class rate; the level A, B, G, H and J second-class rates; and the basic presort and 3/5 presort third-class rates.

520 General Requirements for All Automation-Compatible Mailpieces

521 Physical Characteristics

521.1 Size

521.11 General

521.111 Pieces Claimed at the First-Class Rate for Cards. Each piece eligible for the card rates (see 311.1) that is in a mailing claimed at any automation-based (ZIP+4 or ZIP+4 Barcoded) rate must meet the size requirements in 311.11, 322, and 525.

521.112 Pieces Claimed at Rates Other Than the First-Class Rate for Cards. Each piece not eligible for the card rates (see 311.1) that is in a mailing claimed at any automation-based (ZIP+4 or ZIP+4 Barcoded rate) must meet the size requirements in 521.12 through 521.15.

521.113 Definitions. The length of a mailpiece is the dimension which is parallel to the address when the address is positioned for normal reading. The top and bottom of the mailpiece are the upper and lower edges (respectively) that are parallel to the address when the address is positioned for normal reading. The height is the dimension that is perpendicular to the length and the address.

* * * * *

545.7 Barcode Windows in Lower Right Corner. Pieces prepared with barcode windows through which either a 5-digit barcode or no barcode appears are not eligible for any automation-based rates (see 552.32).

546 Ability to Accept Postal Service Water-Based Barcode Ink

546.1 General Requirement. The paper or other material used for the envelope or outermost sheet of the address side of mailpieces claimed at a ZIP+4 rate must allow USPS ink jet printers used with optical character reader (OCR) equipment to print a ZIP+4 barcode on the piece without smearing.

546.2 Drying Time. The paper or other material must allow water-based ink applied by ink jet to dry within 1 second without smearing.

546.3 Nonpaper Materials. Certain nonpaper, plastic-like materials, such as spun bonded Olefin, are not acceptable for mailpieces claimed at a ZIP+4 rate because they do not allow water-based USPS ink jet applied barcode ink to dry without smearing. Nonpaper materials are acceptable for mailpieces claimed at a ZIP+4 rate only if that material is approved by the Postal Service Engineering and Development Center (EDC) (see 546.5).

546.4 Glossy and Coated Paper. Coatings applied to paper, particularly glossy coatings, may prevent quick drying of the water-based ink used by USPS ink jet printer to apply barcodes. Glossy and coated paper may be sent for testing by the EDC (see 546.5).

546.5 Material Testing Procedures

546.51 What to Submit. Mailers wishing to have material tested to determine its ability to accept ink without smearing under the specifications in 546.1 through 546.2 must submit at least 50 sample mailpieces and a letter of request. To assist the EDC in evaluating the sample material in the context of its intended use, the letter must describe the material to be used for producing the mailpieces, including type of mailpiece and its contents and construction, number of pieces, and intended level of mail preparation (e.g., presort).

546.52 Where to Submit. Requests for testing must be addressed to the Engineering and Development Center, U.S. Postal Service (for address, see Address List in Appendices).

546.53 When to Submit. Requests for testing must be submitted at least 6 weeks prior to the date of mailing.

546.54 Testing. The EDC determines whether the material used in the sample mailpiece meets the requirements prescribed in 546.1 through 546.4. Approval is granted only if testing shows that the material can allow water-based USPS ink jet applied ink to dry within 1 second.

546.55 Results. The mailer must be notified in writing of the EDC's test results. If the mailpiece is found to meet the requirements of 546.1 through 546.4, the EDC's letter of approval must include a unique number that refers to the specific mailpiece represented by the samples tested. The letter must be accompanied by one or more of the sample pieces originally submitted by the mailer, and each must bear the unique number contained in the letter.

546.56 Use of Approval. The EDC's letter of approval (showing the unique number) serves as evidence that the material meets the requirements of 546.1 through 546.4. A copy of that letter must be an attachment to each mailing statement submitted for mailings using the tested material.

546.57 Mailing. Post offices must accept the EDC's letter as evidence of compliance with 546.1 through 546.4. However, the mailer must be prepared to demonstrate that the mailpieces presented for mailing are the same as those described in the letter requesting EDC testing if directed by the office where the mailpieces are verified prior to acceptance. To expedite acceptance, mailers whose pieces are questioned in this regard may pay the next higher rate for which their mailings may qualify and, upon successful completion of an appeal under 133, may seek a refund as appropriate.

550 Requirements for Barcoded Pieces

551 ZIP+4 Barcode Requirements

551.1 Barcode Format

551.11 ZIP+4 Barcode Format. A ZIP+4 barcode is made up of a single field of 52 bars. The information content of the barcode is distinguished by the height of the bars, either tall (full) or short (half) bars, which represent a "one" or a "zero" to a USPS barcode sorter. These bars, when separated into groups of 5, represent each of the 9 digits of a ZIP+4 code, plus a tenth digit designated as the "correction digit." The first and last bars of the barcode are "frame bars" and must always be full bars (see Exhibit 551.1). The sequence of bars must represent the ZIP+4 code (including the appropriate correction character) in the address of the piece, according to the code defined in Exhibit 551.1.

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552.2 Five-Digit Barcode Format. The 5-digit barcode must be prepared as described in 551.1, except that there must be a single field of 32 bars consisting of a frame bar, a series of bars that represents the correct 5-digit ZIP Code for the address on the piece (see Exhibit 551.1), a correction digit, and a final frame bar. The correction digit can be determined by adding the numbers in the 5-digit ZIP Code and determining what single-digit number must be added to that sum to make the total a multiple of 10 (a number that ends with a zero).

552.3 Five-Digit Barcode Location

552.31 Five-Digit Barcodes Printed Directly on Mailpieces. The 5-digit barcode printed directly on a mailpiece must be located on the mailpiece as required by 551.2. For barcodes located within the barcode clear zone, however, the leftmost bar of the barcode must be located between 3-7/8 and 4 inches from the right edge of the mailpiece (see Exhibit 552.31). Effective January 1, 1992, the leftmost bar must be located between 4-1/8 and 4-1/4 inches from the right edge of the mailpiece when printed in the barcode clear zone (see 551.23). If the delivery point is either a 5-digit ZIP Code or a ZIP+4 Code, the mailer may, at the mailer's option, encode a longer ZIP Code field for the barcode.

552.32 Barcodes Printed on Inserts. Five-digit barcodes printed on inserts that appear through a barcode window must be located in accordance with the requirements of 551.232 or 552.31. Pieces prepared with 5-digit barcodes that appear through windows, and pieces prepared with barcode windows through which no barcode appears are not eligible for any automation-based rates.

560 Presort Requirements

561 General

561.1 Explanation of Presort Options

561.11 Presort Under Chapters 3, 4, and 6. Mailers may prepare mailings under the presort requirements for ZIP+4 and ZIP+4 Barcoded rates set forth in Chapter 3 for First-Class Mail, Chapter 4 for second-class mail, and Chapter 6 for third-class mail. However, as indicated in 513, the Postal Service plans to make the presort options in 560 the only presort options available to mailers in the future.

561.12 Presort Under Chapter 5

561.121 Classes of Mail. Each mailing presented under Chapter 5 presort rules must be composed of pieces qualifying for the same class of mail. Mixing pieces of different mail classes in the same mailing is prohibited.

561.122 Presorted ZIP+4 Mailings. For presorted ZIP+4 rated mailings, there is only one method of presort: tray-based (see 562), with two options. Option 1 (562.1) consists of previously established regulations that will continue to be available until March 15, 1992. Option 2 (562.2) is available immediately and will be the only ZIP+4 presort option in Chapter 5 beginning March 15, 1992.

Note: Mailings must also meet the other specific eligibility and preparation requirements prescribed for ZIP+4 rates in Chapters 3, 4, or 6, as applicable (see 512).

561.123 ZIP+4 Barcoded Rate Mailings. ZIP+4 Barcoded rate mailings may be presorted using either a tray-based method (see 563) or a package-based method (see 564). If the tray-based method is used, mailers may choose between two options until March 15, 1992. Tray-based option 1 (563.1), which consists of previously established presort regulations, will continue to be available until March 15, 1992. Tray-based option 2 (563.2), which is available immediately, will be the only tray-based presort option in Chapter 5 beginning March 15, 1992. There is only one option available for package-based presort (see 564).

Note: Mailings must also meet the other specific eligibility and preparation requirements prescribed for ZIP + 4 Barcoded rates in Chapters 3, 4, or 6, as applicable (see 512).

561.2 Packages

561.21 Use of Packages. The requirements of this section apply whenever packages are prepared. For tray-based mailings prepared under 562.1 and 563.1, packages are not allowed except for overflow trays as described in 561.44 and trays containing pieces that exceed the width of trays as prescribed in 561.422. The regulations governing when packaging is required and when packaging is prohibited for mailings prepared under the other options are in 562.231, 563.231, 564.32, 564.42, and 564.52.

561.22 General Requirements for Labeling and Securing Packages

561.221 Securing Packages. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness is 6 inches. All packages must be secured with either rubber bands, the preferred material, or approved elastic strapping. Elastic strapping must not be used unless it has been approved by the Engineering and Development Center prior to use (see 561.223) to ensure that it can adequately keep the packages intact during Postal Service handling, that it can stretch and then resume its original shape, and that it can be easily removed by stretching. Packages up to 1 inch thick must be secured with at least one rubber band or elastic strap around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands or elastic straps. The first rubber band or elastic strap must be placed around the length and the second, around the girth so that it crosses over the first. Rubber bands or elastic straps should be positioned as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than

two rubber bands or elastic straps may be used to secure a package, but rubber bands or elastic strapping must never lie along the outer 1 inch of any edge.

Exception: The requirement for use of only rubber bands or pre-approved elastic strapping material does not apply to second- and third-class mailings prepared under 562.1 or 563.1 (tray-based ZIP + 4 and ZIP + 4 Barcoded rate options available only until March 15, 1992).

561.222 Labeling Packages. Where 5-digit packages are required to be labeled, the lower left corner of the top piece in each package must bear a red "D" pressure-sensitive package label. Where 3-digit packages are required to be labeled, the lower left corner of the top piece in each package must bear a green "3" pressure-sensitive package label. Pressure-sensitive labels are provided by the Postal Service. Alternatively, the applicable 5-digit or 3-digit optional endorsement package label line may be used as specified in 369, 441.232, or 642.3.

561.223 Testing of Elastic Strapping Material

a. Submission of Request. Mailers wishing to have elastic strapping material tested to determine its acceptability for securing packages of automation-compatible mail must submit a letter of request with sample packages of mail that are secured with the material to be tested under 561.221. The material is tested to make sure that it can adequately keep the packages intact during Postal Service handling, it can stretch and then resume its original shape, and it can easily be removed by stretching. Five sample packages in each of the following thicknesses must be submitted for each material to be tested (25 packages total): 6 inches, 4 inches, 2 inches, 1 inch, and 10 pieces. The letter of request and sample packages must be submitted to the following address at least 6 weeks before the planned date of mailing:

ELASTIC STRAPPING TEST
CONTAINER AND MATERIAL HANDLING DIVISION
ENGINEERING AND DEVELOPMENT CENTER
US POSTAL SERVICE
8403 LEE HIGHWAY
MERRIFIELD VA 22082-8142

b. Results. The mailer is notified in writing of the EDC's test results. If the strapping material is found to meet the requirements of 561.223a, the EDC's letter of approval includes a unique number referring to the specific strapping material represented by the samples tested and the specific mailer. The letter is accompanied by one or more of the sample packages originally submitted by the mailer, and each bears the unique number contained in the letter.

c. Use of Approval. The EDC's letter of approval (showing the unique number) serves as evidence that the mailpiece meets the requirements of 561.223a. A copy of that letter must be attached to each mailing statement submitted for mailings using the tested strapping material.

d. Mailing. Post offices must accept the EDC's letter as evidence of compliance with 561.223a. However, the mailer must be prepared to demonstrate that the strapping material used to prepare the mailing presented is the same as that submitted for testing if requested to do so by the office where the mailing is verified prior to acceptance. To expedite acceptance, mailers whose mailings are questioned in this regard may pay the next higher rate for which their mailings may qualify and, upon successful completion of an appeal under 133, may seek a refund as appropriate.

561.3 Separator Cards

561.31 Use of Separator Cards. Separator cards are strongly recommended as an alternative to packaging for the 5-digit presort tier of package-based ZIP + 4 barcoded mailings (see 564.322). Separator cards must also be used to delineate groups of 100 pieces of residual mail in the physical separation by rate category options in 562.2, 563.2, and 564.5.

561.32 Physical Requirements for Separator Cards. Separator cards may be prepared from any paper or card stock and must be at least 1/4 inch higher than the highest piece in the mailing. It is recommended that they be prepared of card stock, be of a color different from the mailpieces, and meet the physical characteristics for automation-compatible mailpieces in 520.

561.4 Trays

561.41 Use of Trays Required. All letter-size mailings prepared under Chapter 5 must be prepared in trays.

561.42 Placement of Pieces in Trays

561.421 Trays Containing Only Pieces Not Exceeding Width of Trays. All pieces in each tray must be faced in the same direction. The pieces must be placed upright in the tray with the address right side up and facing the front (labeled end) of the tray. Pieces that exceed the height of trays may be tilted toward the back (unlabeled end) of the tray so that a sleeve may be placed on the tray. See Exhibit 562.421a for pieces that fit trays and Exhibit 562.421b for pieces that exceed the height but not the width of trays.

561.422 Trays Containing Pieces Exceeding Width of Trays. All pieces in each tray must be placed upright in the tray with the address right side up and facing the long (2-foot) side of the tray that is to the right of the front (labeled end) of the tray. The pieces must be placed in two rows within the trays if there are enough pieces to do so. (For certain tray levels, full trays (see 561.43) with two rows of pieces within the trays are required.) In full trays, mailers must either place cardboard separators or other stiff material that is the same height and width as the tray between the rows of pieces in the tray, or secure the pieces together into packages with rubber bands or elastic strapping to maintain the orientation of the pieces in the tray during transit. See 561.22 for further information on packaging requirements. Pieces placed in trays that are less than full must be packaged. In both full and less than full trays, pieces that exceed the height of trays may be tilted toward the back (unlabeled end) of the tray so that a sleeve may be placed on the tray. See Exhibit 562.422a for pieces that exceed the width, but not the

height of trays and Exhibit 562.422b for pieces that exceed both the width and the height of trays.

561.43 Definition of Full Tray

561.431 Pieces Not Exceeding Height or Width of Trays. For purposes of 560, a full tray is at least 3/4 full of mail when the bottom long edges of the tray are placed at no less than a 45 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight. See Exhibit 561.431.

561.432 Pieces Exceeding Width of Trays But Not Height. For purposes of 560, a full tray contains at least two rows of pieces as described in 561.422, and each row fills at least 3/4 of the dimension of the short edges of the tray when the bottom short edges of the tray are placed at no less than a 45 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight. See Exhibit 561.432.

561.433 Pieces Exceeding Height of Trays But Not Width. For purposes of 560, a full tray contains enough pieces to allow the contents to remain faced and not lose their orientation in the tray after they are tilted toward the back of the tray. The pieces are tilted to allow the sleeve to be placed on the tray.

561.434 Pieces Exceeding Both Height and Width of Trays. For purposes of 560, a full tray contains at least two rows of pieces as described in 561.422, and each row contains enough pieces to allow the pieces to remain faced and not lose their orientation in the tray after they are tilted toward the long side of the tray. The pieces are tilted to allow the sleeve to be placed on the tray.

561.44 Volume Per Tray—Preparation of Overflow Trays

561.441 When Overflow Trays Not Permitted. Overflow trays are not permitted in package-based mailings prepared under 564 except for SCF trays.

561.442 When Overflow Trays Permitted. Overflow trays are permitted in all tray levels (5-digit, 3-digit, and SCF trays) in mailings prepared under 562.1, 562.2, 563.1, and 563.2.

561.443 Requirements for Preparation of Overflow Trays. Mailers must distribute the volume among trays when more than one tray is prepared for the same destination to ensure that the maximum number of full 5-digit, 3-digit, and SCF trays are prepared (as defined in 561.43). After this step, the remaining pieces for a 5-digit, 3-digit, or SCF destination may be placed in an overflow tray that is less than full, provided the pieces in the overflow tray are packaged. In tray-based option 2 ZIP+4 and ZIP+4 Barcoded rate mailings (see 562.2 and 563.2), packages in overflow trays must also be labeled as 5-digit packages (in 5-digit trays), or 3-digit packages (in 3-digit and SCF trays). See 561.222 for labeling requirements. Only one overflow tray for a particular 5-digit, 3-digit, or SCF destination may be prepared in a mailing. To allow accurate verification of the mailing by postal acceptance personnel, the mailer must provide a listing of all overflow trays (except for overflow SCF trays prepared under 562.2 and 564) in addition to the other documentation required for the preparation option used.

Note: Since SCF trays in tray-based ZIP+4 Presort mailings prepared under 562.2 and in packaged-based ZIP+4 barcoded mailings prepared under 564 may be less than full, overflow SCF trays in the mailings must be included in the regular documentation required by 562.25 or 564.62 and must not be separately documented as overflow trays.

561.45 Sleeving and Banding. To ensure the integrity of the mail in transit, each tray must be enclosed in a sleeve. Trays that are transported directly from the mailer's plant to a BMC, ASF, or AMF (either on Postal Service transportation or mailer transportation) must also be secured by a plastic strap placed tightly around the length of the tray. It is strongly recommended, but not required, that all trays of mail (other than those for distribution at the post office of origin) be secured by a plastic strap placed tightly around the length of the tray.

561.46 Size and Availability of Trays

561.461 Tray-Based ZIP+4 and ZIP+4 Barcoded Rate Mailings (562 and 563). Only 2-foot trays may be used to prepare mailings, except that until December 20, 1992, tray-based mailings may be prepared using 1-foot trays (if they are available as they are being phased out by the Postal Service). The Postal Service will provide 2-foot trays and sleeves and will provide 1-foot trays and sleeves as available. Mailers may only use trays provided by the Postal Service. However, the Postal Service will no longer procure 1-foot trays and does not guarantee that they will be available during this phase-out period.

561.462 Package-Based ZIP+4 Barcoded Rate Mailings (564). Only 2-foot trays may be used to prepare package-based ZIP+4 barcoded rate mailings under 564.

561.47 Tray Labels

561.471 General. A tray label must be securely placed in the tray label holder at the end of each tray. Tray labels must not be taped to the end of each tray. Tray labels are subject to the same requirements specified for sack labels in 441.32, except for 441.321a (color) and 441.321b (size). In addition, no extraneous information may appear above Line 1 of tray labels and the information that is required to appear on Lines 1, 2, and 3 of the tray labels is the information specified in 562.14, 562.232, 563.14, 563.232, 564.33, 564.43, or 564.52, as applicable.

561.472 Color. The color of tray labels for First- and third-class mail must be white or manila. The color of tray labels for second-class mail must be pink.

561.473 Size. Tray labels must fall within the following tolerances:

a. Length. Minimum 3-1/4 inches; maximum 3-3/8 inches.

b. Height. Minimum 1-7/8 inches; maximum 1-15/16 inches.

562 Presorted ZIP+4 Mail

562.1 Option 1 (Effective Until March 15, 1992)

562.11 85% Requirement. At least 85% of the total pieces in a ZIP+4 rate mailing must bear the correct ZIP+4 code (see 530). All remaining pieces must bear a 5-digit ZIP Code. If the correct ZIP+4 barcode (prepared as required by 530 and 550) is used to satisfy the requirement for a ZIP+4 code, the correct numeric ZIP+4 code or 5-digit ZIP Code must also appear in the address. Pieces bearing address block barcodes meeting specifications in Chapter 5 are eligible for ZIP+4 rates.

562.12 Rate Eligibility

562.121 First-Class Mail. In 5-digit, 3-digit and SCF trays, ZIP+4 coded pieces may qualify for the ZIP+4 Presort rate, other pieces for the Presorted First-Class rate. (In 3-digit and SCF trays, there must be at least 50 pieces for each 3-digit ZIP Code area.) Residual pieces not sorted to these trays may be eligible for the nonpresorted ZIP+4 rate (if ZIP+4 coded) or the single-piece First-Class rate.

562.122 Second-Class Mail. In 5-digit and 3-digit trays, ZIP+4 coded pieces may qualify for the level B5/H5/J5 and B3/H3/J3 ZIP+4 rates respectively, and other pieces for the level B/H/J rates. Pieces in SCF trays may be eligible for the level A/G/J1 ZIP+4 rates (if ZIP+4 coded) or the level A/G/J rates. All pieces in ZIP+4 second-class mailings must be sorted to at least the SCF level.

562.123 Third-Class Mail. In 5-digit and 3-digit trays, ZIP+4 coded pieces may qualify for 3/5 ZIP+4 rates, other pieces for the 3/5 presort rate. In SCF trays, ZIP+4 coded pieces may be eligible for the Basic ZIP+4 rate, other pieces for the basic presort rate. Pieces not sorted to these trays must be prepared as a separate mailing.

562.13 Contents Line. The second (contents) line of tray labels must show the class of mail (FCM for First-Class, 2C or NEWS, as appropriate, for second-class, or 3C for third-class) followed by the type of mailing (ZIP+4 PRESORT).

562.14 Traying Requirements for ZIP+4 Presort Rate Eligibility

562.141 5-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray must be prepared for that destination. Trays that are not full are prohibited, except as provided in 561.44. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, 5-digit ZIP Code
Line 2: Class, contents
Line 3: Mailer, mailer location

Example:

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DETROIT, MI                    48235
FCM ZIP+4 PRESORT
NB COMPANY UNION SC
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562.142 3-Digit Trays. After preparing all possible 5-digit trays, if there are sufficient pieces to fill a tray for one of the 3-digit ZIP Code areas listed in Exhibit 122.63c through Exhibit 122.63d, a 3-digit tray must be prepared for that destination. For First-Class Mail, there must be at least 50 pieces for each 3-digit ZIP Code area. Trays that are not full are prohibited, except as provided in 561.44. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, 3-digit destination
Line 2: Class, contents
Line 3: Mailer, mailer location

Example:

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DETROIT MI                     482
FCM ZIP+4 PRESORT
NB COMPANY UNION SC
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562.143 SCF Trays. After preparing all possible 5-digit and 3-digit trays, if there are sufficient pieces to fill a tray for one of the SCF areas listed in Exhibit 122.63d, an SCF tray must be prepared for that destination. For First-Class Mail, there must be at least 50 pieces for each 3-digit ZIP Code area. For all classes of mail, pieces to the same 3-digit ZIP Code area must be grouped together. For second-class pieces, all remaining mail must be sorted to SCF trays. For First- and third-class mail, trays that are not full are prohibited, except as provided in 561.44. Trays must be labeled as follows:

Line 1: SCF, facility name, two-letter state abbreviation, code
Line 2: Class, contents
Line 3: Mailer, mailer location

Example:

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SCF DETROIT MI                 481
FCM ZIP+4 PRESORT
NB COMPANY UNION SC
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562.15 Residual Mail

562.151 General. Residual pieces are those that could not be trayed as required by 562.14.

562.152 First-Class Mail. Residual pieces must be placed in trays bearing the tray label "Residual Mail."

562.153 Second-Class Mail. Residual pieces are not allowed in ZIP+4 second-class mailings. All pieces must be sorted to SCF trays (see 562.143).

562.154 Third-Class Mail. Residual pieces are not allowed in ZIP+4 mailings and must be prepared as a separate mailing.

562.16 Documentation

562.161 When Not Required. The documentation described in 562.162 is not required when every piece in the mailing bears the correct ZIP+4 code and the correct postage at the rate for which it qualifies. Separate

documentation may oe required under 561.44, if applicable.

562.162 Content

a. Tray Label Option

(1) Sequence. The documentation must be sequenced by level of sortation (5-digit, 3-digit, and SCF) and must show, for each tray in each group, a unique tray number or the exact top line of the tray label. In the 5-digit portion, the contents of each tray must be detailed by 5-digit ZIP Code, and, in the 3-digit and SCF portion, by 3-digit ZIP Code prefix.

(2) Information. Each ZIP Code entry must describe the number of pieces that qualifies for each rate category and the number of pieces prepared with a ZIP+4 code. For 3-digit and SCF trays, the documentation must show a subtotal for the number of pieces at each rate category, the number of pieces with a ZIP+4 code, and the total number of pieces in the tray.

(3) Summary. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the number prepared with a ZIP+4 code, the total number of pieces in the mailing, and the total postage (or additional postage due) for the mailing. The summary may include the information required by 561.44, if applicable.

(4) Tray Preparation. With this option, the trays do not have to be presented for acceptance in any particular order.

b. ZIP Code Option

(1) Sequence. The documentation must be sequenced by level of sortation (5-digit, 3-digit, and SCF). In the 5-digit portion, the entries must be listed by 5-digit ZIP Code, and, in the 3-digit and SCF portion, by 3-digit ZIP Code prefix.

(2) Information. Each entry must show the number of pieces in each rate category, the number of pieces prepared with a ZIP+4 code, and the total number of pieces.

(3) Summary. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the number prepared with a ZIP+4 code, the total number of pieces in the mailing, and the total postage (or additional postage due) for the mailing. The summary may include the information required by 561.44, if applicable.

(4) Tray Preparation. With this option, the trays must be separated by level of sortation and, within each, grouped by destination, when presented for acceptance.

562.2 Option 2 (Required March 15, 1992, Optional Until Then)

562.21 85% Requirement. At least 85% of the total pieces in a ZIP+4 rate mailing must bear the correct ZIP+4 code (see 530). All remaining pieces must bear the correct 5-digit ZIP Code. If the correct ZIP+4 barcode or delivery point barcode (prepared as required by 530 and 550) is used to satisfy the requirement for a ZIP+4 code, the correct numeric ZIP+4 code or correct 5-digit ZIP Code must also appear in the address.

562.22 Rate Eligibility

562.221 First-Class Mail

a. 5-Digit, 3-Digit, and SCF Trays. ZIP+4 coded pieces in 5-digit, 3-digit, and SCF trays may qualify for the ZIP+4 Presort rate. Other pieces in these trays may qualify for the Presorted First-Class rate. Both 5-digit and 3-digit trays must be full trays (see 561.43) or overflow trays (see 561.44). In 3-digit and SCF trays, there must be at least 50 pieces for each 3-digit ZIP Code area.

b. Residual Trays. Residual pieces (pieces remaining after preparing full and overflow 5-digit and 3-digit trays, and SCF trays with at least 50 pieces per 3-digit ZIP Code area) may qualify for the nonpresorted ZIP+4 rate (if ZIP+4 coded) or the single-piece First-Class rate.

562.222 Second-Class Mail (Reserved)

562.223 Third-Class Mail

a. 5-Digit and 3-Digit Trays. ZIP+4 coded pieces in 5-digit and 3-digit trays may qualify for the 3/5 ZIP+4 rates. Other pieces in these trays may qualify for the 3/5 presort rates. These trays must be full trays (see 561.43) or overflow trays (see 561.44).

b. SCF Trays. ZIP+4 coded pieces in SCF trays may qualify for the basic ZIP+4 rate. Other pieces in SCF trays may qualify for the basic presort rate. There is no minimum quantity for SCF trays. All pieces in third-class ZIP+4 mailings must be sorted to at least the SCF level.

Note: Even though less than full trays that contain mail for only one 3-digit area must be labeled under the requirements for 3-digit trays (see 562.232b(2) and 562.232b(3)), such a tray is considered an SCF tray for rate purposes, except when it is an overflow 3-digit tray. A less than full tray for a particular 3-digit destination may be considered an overflow 3-digit tray only when there is at least one other full tray in the mailing for that same 3-digit destination (see 561.44). Overflow 3-digit trays must also be separately documented as required in 561.44.

c. Residual Trays. There are no residual trays in third-class mailings.

562.23 Sortation Requirements

562.231 ZIP Code Grouping and Packaging Requirements

a. Grouping/Packaging in 5-Digit and 3-Digit Trays

(1) Full Trays. There are no ZIP Code grouping requirements in 5-digit and 3-digit trays. Packaging is not permitted in full 5-digit and 3-digit trays of pieces that do not exceed the width of trays. Packaging is permitted for pieces that exceed the width of trays when it is used to maintain the orientation of the pieces within the trays as described in 561.422. Package labels are not required for this packaging.

Note: Both 5-digit and 3-digit trays are required to be full (see 562.232b(1), 562.232b(2), and 561.43) except that less than full overflow trays are permitted as described in 561.44. In First-Class mailings, there must be at least 50 pieces for each 3-digit ZIP Code area. If less than 50 pieces fill a tray (pieces exceeding the height and width of trays), the remaining pieces to

that 3-digit ZIP Code area must be placed in a 3-digit overflow tray or in an SCF tray.

(2) Overflow Trays. The pieces in overflow trays to 5-digit and 3-digit destinations as provided in 561.44 (overflow trays are less than full by definition) must be packaged to maintain their orientation. All packages must be labeled as either 5-digit packages or 3-digit packages as appropriate. See 561.22 for further requirements on securing and labeling packages.

b. Grouping/Packaging in SCF Trays

(1) First-Class Mailings. There must be at least 50 pieces for each 3-digit ZIP Code area within SCF trays. Within SCF trays for SCFs serving more than one 3-digit ZIP Code area, pieces for the same 3-digit ZIP Code area must be grouped together. Although it is recommended that groups of 50 or more pieces for the same 3-digit area be placed in the trays in numeric sequence, this is not required. For example, in a tray containing pieces for 023 and 024 for the Brockton, MA SCF, it is permissible for all the pieces for 024 to be grouped together in front of the pieces for 023; but it is recommended that the pieces for 024 be placed behind the pieces for 023. Packaging is not permitted in full SCF trays of pieces that do not exceed the width of trays. Packaging is permitted for pieces that exceed the width of trays when it is used to maintain the orientation of the pieces within the trays as described in 561.422. Package labels are not required for this packaging in full trays. In less than full SCF trays, the pieces must be packaged to maintain their orientation in the tray and labeled. Each package in a less than full SCF tray must contain mail for only one 3-digit area and must be labeled as a 3-digit package. See 561.22 for further requirements on securing and labeling packages.

Note: Where less than 50 pieces fill a tray, or in other situations where a group of 50 or more pieces for the same 3-digit ZIP Code area will not fit in the same SCF tray, the remaining pieces for the SCF area must be placed in another SCF tray.

(2) Third-Class Mailings. There are no minimum quantity requirements per 3-digit ZIP Code area within SCF trays of third-class mail. Within SCF trays for SCFs serving more than one 3-digit ZIP Code area, pieces for the same 3-digit ZIP Code area must be grouped together. Although it is recommended that groups of pieces for the same 3-digit area be placed in the trays in numeric sequence, this is not required. For example, in a tray containing pieces for 023 and 024 for the Brockton, MA SCF, it is permissible for all the pieces for 024 to be grouped together in front of the pieces for 023; but it is recommended that the pieces for 024 be placed behind the pieces for 023. Packaging is not permitted in full SCF trays of pieces that do not exceed the width of trays. Packaging is permitted for pieces that exceed the width of trays when it is used to maintain the orientation of the pieces within the trays as described in 561.422. Package labels are not required for this packaging in full trays. In less than full SCF trays, the pieces must be packaged to maintain their orientation in the tray and labeled. Each package in a less than full SCF tray must contain mail for only one 3-digit ZIP Code area and be labeled as a 3-digit package. See 561.22 for further requirements on securing and labeling packages.

c. Grouping/Packaging in Residual Trays (First-Class Mail Only). See 562.24.

562.232 Traying Requirements

a. General. The requirements in 561.4 must be met.

b. Tray Sortation

(1) 5-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray must be prepared for that destination. Trays that are not full are prohibited, except that one overflow tray per 5-digit ZIP Code area is permitted as provided in 561.44. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "ZIP + 4 PRESORT"
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location

Example:

DETROIT MI	48235
FCM ZIP + 4 PRESORT	
NB COMPANY UNION SC	

Exception: Preparation of 5-digit trays is not required if the qualifying portion of the mailing includes only mail for the 3-digit areas designated as automated sites in Exhibit 122.63m trayed in 3-digit and SCF trays. Although third-class automated site mailings are limited strictly to mailpieces for automated sites in Exhibit 122.63m, pieces in residual trays in automated site First-Class mailings may contain mail for any ZIP Code area in the nation since single piece rates are paid on First-Class residual mail.

(2) 3-Digit Trays. If, after preparing all possible full 5-digit trays (and, at the mailer's option, overflow 5-digit trays), there are sufficient pieces remaining to fill a tray for a 3-digit ZIP Code destination, a 3-digit tray must be prepared. For First-Class Mail, there must be at least 50 pieces per 3-digit ZIP Code area. (See the note in 562.231a(1) for instructions concerning First-Class mailings where a full tray may contain less than 50 pieces for a 3-digit ZIP Code area.) For all classes of mail, trays that are not full are prohibited, except that one overflow tray per 3-digit ZIP Code area is permitted as provided in 561.44. Trays must be labeled as follows:

(a) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "ZIP + 4 PRESORT"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

PHILADELPHIA PA	191
3C ZIP + 4 PRESORT	
XYZ CORP ROCHESTER NY	

(b) Other 3-Digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of SCF, followed by 3-digit prefix of pieces in tray (see Exhibit 122.63c or Exhibit 122.63d for name of SCF serving 3-digit ZIP Code area)
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "ZIP + 4 PRESORT"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

NORTHERN VIRGINIA VA	221
3C ZIP + 4 PRESORT	
ACE CNSTR CO ROCHESTER NY	

Exception: If the qualifying portion of the mailing includes only mail for automated sites listed in Exhibit 122.63m within 3-digit and SCF trays, preparation of 5-digit trays is not required. See the exception to 562.232b(1). For these automated site mailings, Line 1 of the tray label must contain the information indicated in Exhibit 122.63m.

(3) SCF Trays

(a) Trays for SCFs Serving a Single 3-Digit Area. If, after preparing all possible full 5-digit and full 3-digit trays (and, at the mailer's option, overflow 5-digit and 3-digit trays), there are pieces remaining for a single 3-digit SCF listed in Exhibit 122.63c that are not sufficient to fill a tray, they must be placed in a single 3-digit SCF tray. The pieces in the tray must be rubber-banded or otherwise secured into packages and labeled as described in 562.231b and 561.22. There is no minimum quantity for single 3-digit SCF trays, except for those in First-Class mailings, which must contain at least 50 pieces for each 3-digit ZIP Code area. (See also the note in 562.231a(1) for instructions concerning First-Class mailings where fewer than 50 pieces fill a tray. Trays must be labeled as follows:

Line 1: Name of SCF, two-letter state abbreviation, followed by 3-digit ZIP Code prefix of pieces in tray (see Exhibit 122.63c)
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "ZIP + 4 PRESORT"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

MID-FLORIDA FL	327
FCM ZIP + 4 PRESORT	
FIRST BIOMDCL FAIRFAX VA	

(b) Trays for SCFs Serving Multiple 3-Digit Areas. If, after preparing all possible full 5-digit and full 3-digit trays (and, at the mailer's option, overflow 5-digit and 3-digit trays), there are pieces remaining for one of the SCFs that serve more than one 3-digit area (listed in Exhibit 122.63d), an SCF tray must be prepared. There is no minimum quantity for these SCF trays, except for those in First-Class mailings, which must contain at least 50 pieces for each 3-digit ZIP Code area contained in the tray. (See also the note in 562.231b(1) for instructions concerning First-Class mailings where a full tray may contain less than 50 pieces for a 3-digit ZIP Code area.) Pieces must be grouped by 3-digit area within the tray. When there is less than a full tray, the pieces in the tray must be packaged and labeled as described in 562.231b and 561.22. Packages must contain mail for only one 3-digit ZIP Code area. If the tray contains pieces for only one 3-digit ZIP code area served by the SCF, the tray must be labeled as a 3-digit tray under 562.232b(2). Trays containing pieces for multiple 3-digit areas must be labeled as follows:

Line 1: Letters "SCF," followed by name of SCF, two-letter state abbreviation of SCF, and 3-digit SCF Code shown in Exhibit 122.63d
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by words "ZIP + 4 PRESORT"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

SCF SAN ANTONIO TX	780
3C ZIP + 4 PRESORT	
DR PATERNO BIGFOOT TX	

Exception: If the qualifying portion of the mailing includes only mail for automated sites listed in Exhibit 122.63m, within 3-digit and SCF trays, preparation of 5-digit trays is not required. See the exception to 562.232b(1). For these automated site mailings, Line 1 of the tray label must contain the information indicated in Exhibit 122.63n. Where there is no SCF listed for a given 3-digit area in Exhibit 122.63n, the mailer may prepare a less than full tray for that 3-digit area labeled as a 3-digit tray under 562.232b(2), except that line 1 must show the information in Exhibit 122.63m. The pieces in these less than full trays must be packaged and labeled as 3-digit packages as described in 561.22.

562.24 Residual Mail

562.241 General. There is no residual mail for third-class mailings. Residual mail for First-Class mailings consists of those pieces that cannot be placed in full 5-digit or 3-digit trays, are not placed in overflow trays, and are not of sufficient quantity to be part of a group of 50 or more pieces to a 3-digit ZIP Code area within an SCF tray.

562.242 Preparation of First-Class Residual Pieces. Residual pieces must be placed in trays that are separate from trays of qualifying pieces. The pieces in residual trays in First-Class mailings must be prepared in one of the following two ways:

a. ZIP Code Sequence and Listing Option. Under this option, residual pieces must be placed in residual trays in 3-digit ZIP Code sequence. When a tray is less than full, the pieces in the tray must be packaged by 3-digit area and labeled as described in 561.22. Mailers must provide a listing by 3-digit area of the number of pieces that bear a correct ZIP + 4 code (see 530) and the number of pieces that do not as described in 562.25. Trays must be labeled as follows:

Line 1: Word "RESIDUAL" followed by 3-digit ZIP Code range of pieces in tray
Line 2: Words "FCM ZIP + 4"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL 010-590
FCM ZIP+4
XYZ CORP BIGFOOT TX

b. Physical Separation Option. Under this option, residual pieces bearing correct ZIP+4 codes (see 530) must be separately trayed from residual pieces bearing 5-digit ZIP Codes. Within each tray, the pieces must be separated into groups of 100 pieces. The groups of 100 must be separated by separator cards. When the tray is full, no further preparation is required. When the tray is less than full, pieces must also be secured into packages as described in 561.221 within each group of 100 pieces. When there are less than 100 pieces in a group at the end of the last tray for either of the two types of trays (those containing pieces with correct ZIP+4 codes and those containing pieces with correct 5-digit ZIP Codes) the actual number of pieces in the group must be written on the separator card. The total number of residual pieces that bear correct ZIP+4 codes (see 530) and the total number of pieces that do not must be added to the summary portion of the documentation required in 562.252a(3) or 562.252b(3). Residual trays must be labeled as follows:

(1) Trays Containing ZIP+4 Coded Pieces

Line 1: Word "RESIDUAL"
Line 2: FCM ZIP+4
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL
FCM ZIP+4
XYZ CORP BIGFOOT TX

(2) Trays Containing Pieces Not ZIP+4 Coded

Line 1: Word "RESIDUAL"
Line 2: FCM
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL
FCM
XYZ CORP BIGFOOT TX

562.25 Documentation

562.251 When Not Required. The documentation described in 562.252 is not required when every piece in the mailing bears the correct ZIP+4 code and every piece in the mailing bears the correct postage at the rate for which it qualifies. However, a listing of overflow trays, as required by 561.44, must be provided if applicable.

562.252 Information Required

a. Tray Label Option

(1) Sequence. The documentation must be sequenced by level of sortation (5-digit, 3-digit, and SCF) and must show, for each tray in each group, a unique tray number or the exact top line of the tray label. In the 5-digit portion, the contents of each tray must be detailed by 5-digit ZIP Code. In both the 3-digit portion and the SCF portion the contents of each tray must be detailed by 3-digit ZIP Code prefix. For First-Class mailings having residual pieces prepared under 562.242a, the documentation must also include a residual section that lists the residual portion by unique tray number or the exact top line of the tray label, and details the contents of each residual tray by 3-digit ZIP Code prefix.

(2) Information. Each ZIP Code entry must describe the number of pieces qualifying for each rate category and the number of pieces prepared with a correct ZIP+4 code. For 3-digit and SCF trays (and for First-Class residual trays prepared under 562.242a), the documentation must show a subtotal for the number of pieces at each rate category, the number of pieces with a correct ZIP+4 code, and the total number of pieces in the tray.

(3) Summary. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the number prepared with a correct ZIP+4 code, the total number of pieces in the mailing, and the total postage (or additional postage due) for the mailing. When the physical separation option in 562.242b is used to prepare residual mail, the summary must also include the number of residual pieces in each rate category, and the number of residual pieces prepared with a correct ZIP+4 code, from the hand-counted residual portion of the mailing. The summary may also include the listing of overflow trays required by 561.44, if applicable.

(4) Presentation of Trays. With this option, the trays do not have to be presented for acceptance in any particular order.

b. ZIP Code Option

(1) Sequence. The documentation must be sequenced by level of sortation (5-digit, 3-digit, and SCF). In the 5-digit portion, the entries must be listed by 5-digit ZIP Code. In both the 3-digit portion and the SCF portion, the entries must be listed by 3-digit ZIP Code prefix. For First-Class mailings having residual pieces prepared under 562.242a, the documentation must also include a residual section, which lists the contents of First-Class residual trays by 3-digit ZIP Code prefix.

(2) Information. For each entry, the documentation must show the number of pieces in each rate category, the number of pieces prepared with a correct ZIP+4 code, and the total number of pieces.

(3) Summary. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the total number of pieces prepared with a ZIP+4 code, the total number of pieces in the mailing, and the total postage (or additional

postage due) for the mailing. When the physical separation option in 562.242b is used to prepare residual mail, the summary must also include the number of residual pieces in each rate category, and the number of residual pieces prepared with a correct ZIP+4 code, from the hand-counted residual portion of the mailing. The summary may also include the listing of overflow trays required by 561.44, if applicable.

(4) Presentation of Trays. With this option, the trays must be separated by level of sortation and, within each, grouped by destination, when presented for acceptance.

563 Presorted ZIP+4 Barcoded Mail Tray-Based Preparation Requirements

563.1 Option 1 (Effective Until March 15, 1992)

563.11 85% Requirement. At least 85% of the total number of pieces in a ZIP+4 Barcoded rate mailing must bear the correct ZIP+4 barcode prepared as required by 530 and 550. All pieces must also bear the correct numeric ZIP+4 code or 5-digit ZIP Code in the address. Pieces bearing address block barcodes meeting specifications in 550 are eligible for ZIP+4 Barcoded rates.

563.12 Rate Eligibility

563.121 First-Class Mail

a. 5-Digit Trays. In 5-digit trays, pieces may qualify for the 5-digit ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 551, the ZIP+4 Presort rate if they bear a ZIP+4 code and meet the requirements of 540, or the Presorted First-Class rate.

b. 3-Digit and SCF Trays. In 3-digit and SCF trays, pieces may qualify for the 3-digit ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 551, the ZIP+4 Presort rate if they bear a ZIP+4 code and meet the requirements of 540, or the Presorted First-Class rate. In 3-digit and SCF trays, there must be at least 50 pieces for each 3-digit ZIP Code area.

c. Residual Trays. Residual pieces not sorted to these trays may be eligible for the nonpresorted ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 551, the nonpresorted ZIP+4 rate if they bear a ZIP+4 code and meet the requirements of 540, or the single-piece First-Class rate.

563.122 Second-Class Mail

a. 5-Digit Trays. In 5-digit trays, pieces may qualify for the level B5/H5/J5 ZIP+4 Barcoded rates if they bear a ZIP+4 barcode prepared as specified in 551, the level B5/H5/J5 ZIP+4 rates if they bear a ZIP+4 code and meet the requirements of 540, or the level B/H/J presort rates.

b. 3-Digit and SCF Trays. In 3-digit and SCF trays, pieces may qualify for the level B3/H3/J3 ZIP+4 Barcoded rates if they bear a ZIP+4 barcode prepared as specified in 551, the level B3/H3/J3 ZIP+4 rates if they bear a ZIP+4 code and meet the requirements of 540, or the level B/H/J presort rates.

c. Residual Trays. Residual pieces not sorted to these trays may be eligible for the level A/G/J1 ZIP+4 Barcoded rates if they bear a ZIP+4 barcode prepared as specified in 551, the level A/G/J1 ZIP+4 rates if they bear a ZIP+4 code and meet the requirements of 540, or the level A/G/J presort rates.

563.123 Third-Class Mail

a. 5-Digit Trays. In 5-digit trays, pieces may qualify for the 5-digit ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 551, the 3/5 ZIP+4 rate if they bear a ZIP+4 code and meet the requirements of 540, or the 3/5 presort rate.

b. 3-Digit and SCF Trays. In 3-digit and SCF trays, pieces may qualify for the 3-digit ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 551, the 3/5 ZIP+4 rate if they bear a ZIP+4 code and meet the requirements of 540, or the 3/5 presort rate.

c. Residual Trays. Residual pieces may be eligible for the Basic ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 551, the basic ZIP+4 rate if they bear a ZIP+4 code and meet the requirements of 540, or the basic presort rate.

563.13 Contents Line. The second (contents) line of tray labels must show the class of mail (FCM for First-Class, 2C or NEWS, as appropriate, for second-class, or 3C for third-class) followed by the type of mailing (ZIP+4 BARCODED).

563.14 Traying Requirements

563.141 5-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray may be prepared for that destination. (The 5-digit trays are required only if the 5-digit ZIP+4 Barcoded or level B5/H5/J5 rates are being claimed.) Trays that are not full are prohibited, except as provided in 561.44. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, 5-digit ZIP Code
Line 2: Class, contents
Line 3: Mailer, mailer Location

Example:

DETROIT MI	48235
FCM ZIP+4 BARCODED	
NB COMPANY UNION SC	

563.142 3-Digit Trays. After preparing 5-digit trays, if there are sufficient pieces to fill a tray for one of the 3-digit ZIP Code areas listed in Exhibit 122.63c and Exhibit 122.63d, a 3-digit tray must be prepared for that destination. For First-Class mailings there must be at least 50 pieces for each 3-digit ZIP Code area. Trays that are not full are prohibited, except as provided in 561.44. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, 3-digit destination

Line 2: Class, contents
Line 3: Mailer, mailer Location

Example:

DETROIT MI	482
FCM ZIP+4 BARCODED	
NB COMPANY UNION SC	

563.143 SCF Trays. After preparing any 5-digit trays and all possible 3-digit trays, if there are sufficient pieces to fill a tray for one of the SCF areas listed in Exhibit 122.63d, an SCF tray must be prepared for that destination. For First-Class Mail, there must be at least 50 pieces for each 3-digit ZIP Code area. For all classes of mail, pieces for the same 3-digit ZIP Code area must be grouped together. For all classes of mail, trays that are not full are prohibited, except as provided in 561.44. Trays must be labeled as follows:

Line 1: SCF, facility name, two-letter state abbreviation, 3-digit ZIP Code prefix
Line 2: Class, contents
Line 3: Mailer, mailer location

Example:

SCF DETROIT MI	481
FCM ZIP+4 BARCODED	
NB COMPANY UNION SC	

563.15 Residual Trays. Residual pieces are those that cannot be trayed as required by 563.14. Residual pieces must be placed in trays bearing the tray label "Residual Mail."

563.16 Documentation

563.161 When Not Required. Documentation is not required when every piece in the mailing bears the correct ZIP+4 barcode and the correct postage at the rate for which it qualifies. Separate documentation may be required under 561.44, if applicable.

563.162 Content

a. Tray Label Option

(1) Sequence. The documentation must be sequenced by level of sortation (5-digit, 3-digit, and SCF) and must show, for each tray in each group, a unique tray number or the exact top line of the tray label. In the 5-digit portion, the contents of each tray must be detailed by 5-digit ZIP Code, and, in the 3-digit and SCF portion, by 3-digit ZIP Code prefix.

(2) Information. Each ZIP Code entry must describe the number of pieces that qualifies for each rate category and the number of pieces prepared with a ZIP+4 barcode. For 3-digit and SCF trays, the documentation must show a subtotal for the number of pieces at each rate category, the number of pieces with a ZIP+4 code, and the total number of pieces in the tray.

(3) Summary. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the number prepared with a ZIP+4 barcode, the total number of pieces in the mailing, and the total postage (or additional postage due) for the mailing. The summary may include the information required by 561.44, if applicable.

(4) Tray Preparation. With this option, the trays do not have to be presented for acceptance in any particular order.

b. ZIP Code Option

(1) Sequence. The documentation must be sequenced by level of sortation (5-digit, 3-digit, and SCF). In the 5-digit portion, the entries must be listed by 5-digit ZIP Code, and, in the 3-digit and SCF portion, by 3-digit ZIP Code prefix.

(2) Information. Each entry must show the number of pieces in each rate category, the number of pieces prepared with a ZIP+4 barcode, and the total number of pieces.

(3) Summary. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the number prepared with a ZIP+4 barcode, the total number of pieces in the mailing, and the total postage (or additional postage due) for the mailing. The summary may include the information required by 561.44, if applicable.

(4) Tray Preparation. With this option, the trays must be separated by level of sortation when presented for acceptance.

563.2 Option 2 (Required March 15, 1992, Optional Until Then)

563.21 Required Percentage of ZIP+4 Barcoded Pieces

563.211 85% Requirement for the Entire Mailing. At least 85% of the total number of pieces in a tray-based ZIP+4 Barcoded rate mailing must bear the correct ZIP+4 barcode or correct delivery point barcode prepared as required by 530 and 550. The barcodes may be placed either in the address block or in the lower right corner of the mailpiece as required by 550. All pieces must also bear the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

563.212 100% Requirement for the Pieces in 5-Digit Trays. Except as provided in 563.213, each piece placed in a 5-digit tray must bear the correct ZIP+4 barcode or correct delivery point barcode prepared as required by 530 and 550. Each piece must also bear either the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

Note: The 5-digit trays are optional, and need be prepared only if the mailer wishes to qualify pieces for the 5-digit ZIP+4 Barcoded rates.

563.213 Limited Exception to 100% Requirement in 5-Digit Trays. Until December 20, 1992, mailers are not required to meet the requirement of 563.212. The overall 85% requirement in 563.211, however, must be met for all mailings.

563.22 Rate Eligibility

563.221 First-Class Mail

a. 5-Digit Trays

(1) 5-Digit Trays Meeting 100% ZIP+4 or Delivery Point Barcoded Requirement. In 5-digit trays meeting the 100% ZIP+4 barcoded or delivery point barcoded requirement of 563.212, each piece may qualify for the 5-digit ZIP+4 Barcoded rate. All 5-digit trays must be full trays (see 561.43) or overflow trays (see 561.44).

(2) 5-Digit Trays Submitted Under Limited Exception in 563.213. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode may qualify for the 5-digit ZIP+4 Barcoded rate. Pieces without a ZIP+4 barcode or delivery point barcode may qualify for the ZIP+4 Presort rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the Presorted First-Class rate. All 5-digit trays must be full trays (see 561.43) or overflow trays (see 561.44).

b. 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays may qualify for the 3-digit ZIP+4 Barcoded rate. Pieces without a ZIP+4 barcode or delivery point barcode may qualify for the ZIP+4 Presort rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the Presorted First-Class rate. In 3-digit and SCF trays, there must be at least 50 pieces for each 3-digit ZIP Code destination. All 3-digit and SCF trays must be full trays (see 561.43) or overflow trays (see 561.44).

c. Residual Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual trays may qualify for the nonpresorted ZIP+4 Barcoded rate if the pieces are eligible for the card rates or the nonpresorted ZIP+4 rates if the pieces are other than cards. Residual pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the nonpresorted ZIP+4 rate if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the single-piece First-Class rate.

563.222 Second-Class Mail (Reserved)

563.223 Third-Class Mail

a. 5-Digit Trays

(1) 5-Digit Trays Meeting 100% ZIP+4 or Delivery Point Barcoded Requirement. In 5-digit trays meeting the 100% ZIP+4 barcoded or delivery point barcoded requirement of 563.212, each piece may qualify for the 5-digit ZIP+4 Barcoded rate. All 5-digit trays must be full trays (see 561.43) or overflow trays (see 561.44).

(2) 5-Digit Trays Submitted Under Limited Exception in 563.213. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode may qualify for the 5-digit ZIP+4 Barcoded rate. Pieces without a ZIP+4 barcode or delivery point barcode may qualify for the 3/5 ZIP+4 rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the 3/5 presort rate. All 5-digit trays must be full trays (see 561.43) or overflow trays (see 561.44).

b. 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays may qualify for the 3-digit ZIP+4 Barcoded rates. Pieces without a ZIP+4 barcode or delivery point barcode may qualify for the 3/5 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the 3/5 presort rate. Both 3-digit and SCF trays must be full trays (see 561.43) or overflow trays (see 561.44).

c. Residual Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual trays may qualify for the basic ZIP+4 Barcoded rates. Residual pieces without a ZIP+4 barcode or delivery point barcode may qualify for the basic ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540. Other pieces qualify for the basic presort rates.

563.23 Sortation Requirements

563.231 ZIP Code Grouping and Packaging

a. Grouping/Packaging in 5-Digit and 3-Digit Trays

(1) Within Full Trays. There are no ZIP Code grouping requirements for 5-digit and 3-digit trays. Packaging is not permitted in full 5-digit and 3-digit trays containing only pieces that do not exceed the width of trays. Packaging is permitted within trays containing pieces that exceed the width of trays when packaging is used to maintain the orientation of the pieces within the trays as described in 561.422. Package labels are not required for this packaging.

Note: Both 5-digit and 3-digit trays are required to be full (see 563.232b(1), 563.232b(2), and 561.43) except that less than full overflow trays are permitted as provided in 561.44. For First-Class mailings, there must be at least 50 pieces for each 3-digit ZIP Code area. If less than 50 pieces fill a tray (pieces exceeding the height and width of trays) the remaining pieces to that 3-digit ZIP Code area must be placed in another full 3-digit tray if possible, a 3-digit overflow tray, or an SCF tray.

(2) Within Overflow Trays. The pieces in overflow trays (less than full by definition) to 5-digit and 3-digit destinations as provided in 561.44 must be packaged to maintain their orientation, and labeled as either 5-digit packages or 3-digit packages as appropriate. See 561.22 for further requirements on securing and labeling packages.

b. Grouping/Packaging in SCF Trays

(1) First-Class Mailings

(a) Full Trays. There must be at least 50 pieces for each 3-digit ZIP Code area within SCF trays. SCF trays must be full (see 563.232b(3)) except for overflow trays as provided in 561.44. Within SCF trays for SCFs serving more than 3-digit ZIP Code area, pieces for the same 3-digit ZIP Code area must be grouped together. Although it is recommended that groups of 50 or more pieces for the same 3-digit area be placed in the trays in numeric sequence, this is not required. For example, in a tray containing pieces for 023 and 024 for the

Brockton, MA SCF, it is permissible for all the pieces for 024 to be grouped together in front of the pieces for 023; but it is recommended that the pieces for 024 be placed behind the pieces for 023. Packaging is not permitted in full SCF trays of pieces that do not exceed the width of trays. Packaging is permitted for pieces that exceed the width of trays when it is used to maintain the orientation of the pieces within the trays as described in 561.422. Package labels are not required for this packaging.

Note: If less than 50 pieces fill a tray, or in other situations where a group of 50 or more pieces for the same 3-digit ZIP Code area cannot fit in the same SCF tray, the remaining pieces to that 3-digit ZIP Code area must be placed in another full SCF tray or in an SCF overflow tray.

(b) Overflow Trays. The pieces in First-Class SCF overflow trays (less than full by definition) must be packaged to maintain their orientation. Such packages must contain mail for only one 3-digit ZIP Code area and must be labeled as 3-digit packages. See 561.22 for further requirements on securing and labeling packages.

(2) Third-Class Mailings

(a) Full Trays. There is no minimum quantity requirement for individual 3-digit ZIP Code areas in SCF trays of third-class mail. However, SCF trays must be full (except for overflow trays as provided in 561.44.) Pieces for each 3-digit ZIP Code area contained within the tray must be grouped together. Although it is recommended that groups of pieces for the same 3-digit area be placed in the trays in numeric sequence, this is not required. For example, in a tray containing pieces for 023 and 024 for the Brockton, MA SCF, it is permissible for all the pieces for 024 to be grouped together in front of the pieces for 023; but it is recommended that the pieces for 024 be placed behind the pieces for 023. Packaging is not permitted in full SCF trays that contain only pieces that do not exceed the width of trays. Packaging is permitted within full SCF trays containing pieces that exceed the width of trays when packaging is used to maintain the orientation of the pieces within the trays as described in 561.422. Package labels are not required for this packaging.

(b) Overflow Trays. The pieces in third-class SCF overflow trays (less than full by definition) must be packaged to maintain their orientation in the tray. Each package must contain mail for only one 3-digit ZIP Code area and must be labeled as a 3-digit package. See 561.22 for further requirements on securing and labeling packages.

c. Grouping/Packaging in Residual Trays. See 563.232c.

563.232 Traying Requirements

a. General. The requirements in 561.4 must be met.

b. Tray Sortation--Qualifying Pieces

(1) 5-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray may be prepared for that destination. 5-digit trays are required only if the First- or third-class 5-digit ZIP+4 Barcoded rates are being claimed. Trays that are not full are prohibited, except for overflow trays as provided in 561.44. All 5-digit trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "Z+4 BARCODED" or "Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

DETROIT MI	48235
FCM Z+4 BARCODED	
NB COMPANY UNION SC	

(2) 3-Digit Trays. If there are sufficient pieces to fill a tray for a 3-digit ZIP Code area, a 3-digit tray must be prepared for that destination. For First-Class Mail, there must be at least 50 pieces for each 3-digit ZIP Code area. For all classes of mail, 3-digit trays that are not full are prohibited, except for overflow trays as provided in 561.44. (See also the note in 563.231a(1) for instructions concerning First-Class mailings where a full tray may contain less than 50 pieces.) Within mailings in which the First- or third-class 5-digit ZIP+4 Barcoded rates are claimed, 3-digit trays may be prepared only after all possible 5-digit trays have been prepared. The 3-digit trays must be labeled as follows:

(a) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "Z+4 BARCODED" or "Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

PHILADELPHIA PA	191
3C Z+4 BARCODED	
ROCKET CO ROCHESTER NY	

(b) Other 3-Digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of SCF, followed by 3-digit prefix of pieces in tray (see Exhibit 122.63c or Exhibit 122.63d for name of SCF serving 3-digit ZIP Code area)
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "Z+4 BARCODED" or "Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

NORTHERN VIRGINIA VA	221
FCM Z+4 BARCODED	
ABC MAILING CO ROCHESTER NY	

(3) SCF Trays. After traying mail to 5-digit areas under 563.232b(1) (if applicable) and to 3-digit areas under 563.232b(2), if there are enough pieces to fill a tray for one of the SCF areas listed in Exhibit 122.63d, an SCF tray must be prepared for that destination. For

First-Class Mail, there must be at least 50 pieces for each 3-digit ZIP Code area. For all classes of mail, SCF trays that are not full are prohibited, except for overflow trays as provided in 561.44. (See also the note in 563.231b(1) for instructions concerning First-Class mailings where a full tray may contain less than 50 pieces for a 3-digit area.) SCF trays must be labeled as follows:

Line 1: Letters "SCF," followed by name of SCF, two-letter state abbreviation of SCF, and 3-digit ZIP Code prefix for SCF shown in Exhibit 122.63d
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "Z+4 BARCODED" or "Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

SCF SAN ANTONIO TX 780
3C Z+4 B/C
DR PATERNO BIGFOOT TX

Note: An overflow SCF tray that contains pieces for only one 3-digit ZIP Code area must be labeled as a 3-digit tray as described in 563.232b(2).

c. Tray Sortation--Residual Pieces. Residual pieces are those that cannot be trayed as required by 563.232b. Residual pieces must be placed in trays that are separate from trays of qualifying pieces. The pieces in residual trays must be prepared in one of the following ways:

(1) Option 1: ZIP Code Sequencing and Listing. Residual pieces must be placed in residual trays in 3-digit ZIP Code sequence. Pieces in less than full residual trays must be packaged by 3-digit area and labeled as 3-digit packages. Each package must contain mail for only one 3-digit area. See 561.22 for further requirements on securing and labeling packages. Mailers must provide a listing by 3-digit area of the various rate qualification categories as described in 563.242. Trays must be labeled as follows:

Line 1: Word RESIDUAL followed by 3-digit ZIP Code range of pieces in tray
Line 2: Appropriate class or contents designation (FCM or 3C LTRS as appropriate) followed by words "ZIP+4 BARCODED"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL 010-590
FCM ZIP+4 BARCODED
XYZ CORP BIGFOOT TX

(2) Option 2: Physical Separation. Residual pieces that bear correct ZIP+4 or delivery point barcodes must be separately trayed from those residual pieces that do not. Pieces that do not bear ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct numeric ZIP+4 code in the address and meeting the requirements of 540, are separately trayed from other pieces. Within each of the resulting trays, the pieces must be separated into groups of 100 pieces. The groups of 100 must be delineated by separator tabs. When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages as described in 561.221 within each group of 100 pieces. When there are less than 100 pieces in a group at the end of the last tray for any of the three types of trays (those containing ZIP+4 or delivery point barcoded pieces, those containing the pieces with correct numeric ZIP+4 codes meeting the requirements of 540, and those containing other pieces) the actual number of pieces in the group must be written on the separator card. The total number of residual pieces in each rate category must be added to the summary portion of the documentation required in 563.242. Option 2 residual trays must be labeled as follows:

(a) Trays Containing ZIP+4 or Delivery Point Barcoded Mail

Line 1: Word "RESIDUAL"
Line 2: Appropriate class or contents designation (FCM or 3C LTRS as appropriate) followed by words "ZIP+4 BARCODED"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL
FCM ZIP+4 BARCODED
XYZ CORP AUSTIN TX

(b) Trays Containing Pieces Not ZIP+4 or Delivery Point Barcoded Bearing Correct Numeric ZIP+4 Code in Address and Meeting Requirements of 540

Line 1: Word "RESIDUAL"
Line 2: Appropriate class or contents designation (FCM or 3C LTRS) followed by words "ZIP+4"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL
FCM ZIP+4
XYZ CORP AUSTIN TX

(c) Trays Containing Other Pieces

Line 1: Word "RESIDUAL"
Line 2: Appropriate class or contents designation (FCM or 3C LTRS)
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL
FCM
XYZ CORP AUSTIN TX

563.24 Documentation

563.241 When Not Required. The documentation described in 563.242 is not required when every piece in the mailing bears the correct ZIP+4 barcode and each piece in the mailing bears the correct postage at the rate

for which it qualifies. However, a listing of overflow trays, as required by 561.44, must be provided if applicable.

563.242 Information Required

a. Tray Label Option

(1) Sequence. The documentation must be sequenced by level of sortation (5-digit, 3-digit, and SCF) and must show, for each tray in each group, a unique tray number or the exact top line of the tray label. For the 5-digit portion, the contents of each tray must be detailed by 5-digit ZIP Code. For both the 3-digit portion and the SCF portion, the contents of each tray must be detailed by 3-digit ZIP Code prefix. When residual mail is prepared under Option 1: ZIP Code Sequencing and Listing, set forth in 563.232c(1), the documentation must also include a residual section that lists residual trays by unique tray number or by the exact top line of the tray label, and the contents of residual trays must be detailed by 3-digit ZIP Code prefix.

(2) Information. Each ZIP Code entry must describe the number of pieces qualifying for each rate category and the number of pieces prepared with a correct ZIP+4 barcode or delivery point barcode. For 3-digit and SCF trays, the documentation must show a subtotal for the number of pieces at each rate category, the number of pieces with a correct ZIP+4 barcode or delivery point barcode, and the total number of pieces in the tray. For residual mail prepared under Option 1: ZIP Code Sequencing and Listing, set forth in 563.232e(1), the documentation must show a subtotal for the number of pieces at each rate category, the number of pieces with a ZIP+4 barcode, and the total number of pieces in the tray.

(3) Summary. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the number prepared with a correct ZIP+4 barcode or delivery point barcode, the total number of pieces in the mailing, and the total postage (or additional postage due) for the mailing. When Option 2: Physical Separation, in 563.232e(2), is used to prepare residual mail, the summary must also include the number of residual pieces in each rate category, and the number of residual pieces prepared with a ZIP+4 barcode from the hand-counted residual portion of the mailing. The summary may also include the listing of overflow trays required by 561.44, if applicable.

(4) Presentation of Trays. With this option, the trays do not have to be presented for acceptance in any particular order.

b. ZIP Code Option

(1) Sequence. The documentation must be sequenced by level of sortation (5-digit, 3-digit, and SCF). For the 5-digit portion, the entries must be listed by 5-digit ZIP Code. For both the 3-digit portion and the SCF portion, the entries must be listed by 3-digit ZIP Code prefix. When residual mail is prepared under Option 1: ZIP Code Sequencing and Listing, set forth in 563.232c(1) the documentation must also include a residual section, which lists the contents of residual trays by 3-digit ZIP Code prefix.

(2) Information. For each entry, the documentation must show the number of pieces in each rate category, the total number of pieces prepared with a ZIP+4 barcode, and the total number of pieces.

(3) Summary. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the total number of pieces prepared with a ZIP+4 barcode, the total number of pieces in the mailing, and the total postage (or additional postage due) for the mailing. When Option 2: Physical Separation, in 563.232c(2), is used to prepare residual mail, the summary must also include the number of residual pieces in each rate category, and the number of residual pieces prepared with a ZIP+4 barcode from the hand-counted residual portion of the mailing. The summary may also include the listing of overflow trays required by 561.44, if applicable.

(4) Presentation of Trays. With this option, the trays must be separated by level of sortation when presented for acceptance.

564 Package-Based Preparation Requirements--5-Digit ZIP+4 Barcoded Rate Mailings

564.1 General Requirements

564.11 Description of a Mailing. A single ZIP+4 Barcoded rate mailing prepared under this section may be made up of three presort tiers, the 5-digit presort tier, the 3-digit presort tier, and the residual/basic presort tier. Rates for pieces in the mailing are based on the presort tier in which they appear (see 564.2). Mailers may:

a. Include all three presort tiers in a single mailing. That is, submit the 5-digit, 3-digit, and residual/basic presort tiers in a single mailing, provided the mailing is presorted for the 5-digit tier before presorting to the 3-digit tier;

b. Submit the 5-digit presort tier as a separate mailing; or

c. Submit a 3-digit and residual/basic portion as a single mailing. Mailings must be presorted to the 3-digit tier before preparing the residual/basic portion. Mailers may not submit a mailing that consists of only a residual/basic presort tier, if the mailing includes any pieces that are eligible for the 3-digit presort tier.

564.12 Description of Presort Tiers

564.121 5-Digit Presort Tier. The 5-digit presort tier consists of groups of 10 or more pieces per 5-digit area, sorted as required by 564.3 and placed in 5-digit, 3-digit, or SCF trays. Both 5-digit and 3-digit trays must be full; SCF trays may be less than full. The 10-piece minimum per 5-digit area applies to all classes of mail. All pieces in the 5-digit presort tier must contain the correct ZIP+4 barcode or delivery point barcode (see 564.132).

564.122 3-Digit Presort Tier. The 3-digit presort tier consists of groups of 50 or more pieces per 3-digit area, sorted as required by 564.4 and placed in 3-digit or SCF trays. All 3-digit trays must be full; SCF trays may be less than full. The 50-piece minimum per 3-digit area applies to all classes of mail.

564.123 Residual Presort Tier. The residual presort tier consists of pieces remaining after performing 5-digit sortations under 564.3 (if applicable) and 3-digit sortations under 564.4. The residual tier must be sorted to one of the following three options:

a. Trayed separately in 3-digit ZIP Code sequence as described in 564.521.

b. Packaged, labeled, and placed in SCF trays with qualifying pieces in the 3-digit tier of the mailing as described in 564.522.

c. Physically separated by rate category as described in 564.523.

564.13 Required Percentage of ZIP+4 Barcoded Pieces

564.131 85% Requirement for the Entire Mailing. At least 85% of the total number of pieces in a packaged-based ZIP+4 Barcoded rate mailing must bear the correct ZIP+4 barcode or delivery point barcode prepared as required by 530 and 550. The barcodes may be placed in either the address block or the lower right corner of the mailpiece as required by 550. Each piece must also bear either the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

564.132 100% Requirement for Pieces in 5-Digit Presort Tier. All pieces within the 5-digit presort tier (see 564.211 and 564.3) must bear the correct ZIP+4 barcode or delivery point barcode prepared as required by 530 and 550. Each piece must also bear either the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

564.2 Rate Eligibility

564.21 First-Class Mailings

564.211 5-Digit Presort Tier (Groups of 10 or More Pieces Per 5-Digit Area in 5-Digit, 3-Digit, and SCF Trays). All pieces within the 5-digit presort tier prepared under 564.3 can qualify for the 5-digit ZIP+4 Barcoded rate. Only pieces bearing a correct ZIP+4 barcode or delivery point barcode may be included in this presort tier.

564.212 3-Digit Presort Tier (Qualifying Groups of 50 or More Pieces Per 3-Digit Area in 3-Digit and SCF Trays). Within the 3-digit presort tier prepared under 564.4, pieces that bear the correct ZIP+4 barcode or delivery point barcode and meet the requirements of 550 can qualify for the 3-Digit ZIP+4 Barcoded rate; pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address and meet the requirements of 540 can qualify for the ZIP+4 Presort rate; and other pieces qualify for the Presorted First-Class rate.

564.213 Residual Presort Tier. Within the residual presort tier prepared under 564.5, pieces that bear the correct ZIP+4 barcode or delivery point barcode and meet the requirements of 550 can qualify for the nonpresorted ZIP+4 Barcoded rates if they also meet the requirements for the card rates (see 311.11, 322, and 328), otherwise they can qualify for the nonpresorted ZIP+4 rate; pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address and meet the requirements of 540 can qualify for the nonpresorted ZIP+4 rate; and other pieces qualify for the single-piece First-Class rates.

564.22 (Reserved)

564.23 Third-Class Mailings

564.231 5-Digit Presort Tier (Groups of 10 or More Pieces Per 5-Digit Area in 5-Digit, 3-Digit, and SCF Trays). All pieces within the 5-digit presort tier prepared under 564.3 can qualify for the 5-digit ZIP+4 Barcoded rate. Only pieces bearing a correct ZIP+4 barcode or delivery point barcode may be included in this presort tier.

564.232 3-Digit Presort Tier (Qualifying Groups of 50 or More Pieces Per 3-Digit Area in 3-Digit and SCF Trays). Within the 3-digit presort tier prepared under 564.4, pieces that bear the correct ZIP+4 barcode or delivery point barcode and meet the requirements of 550 can qualify for the 3-digit ZIP+4 Barcoded rate; pieces that do not bear a correct ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address and meet the requirements of 540 can qualify for the 3/5 ZIP+4 rates; and other pieces qualify for the 3/5 presort rates.

564.233 Residual/Basic Presort Tier. Within the residual presort tier prepared under 564.5, pieces that bear the correct ZIP+4 barcode or delivery point barcode and meet the requirements of 550 can qualify for the basic ZIP+4 Barcoded rates; pieces that do not bear a ZIP+4 barcode or delivery point barcode but bear the correct numeric ZIP+4 code in the address and meet the requirements of 540 can qualify for the basic ZIP+4 rates; and other pieces qualify for the basic presort rates.

564.3 Sortation Requirements--5-Digit Presort Tier

564.31 Minimum Quantity Per 5-Digit Area. There must be at least 10 ZIP+4 barcoded or delivery point barcoded pieces for each 5-digit ZIP Code area in the 5-digit presort tier. Only pieces with a correct ZIP+4 barcode or delivery point barcode are permitted in the 5-digit presort tier. When there are fewer than 10 pieces for a 5-digit ZIP Code area, the pieces for that 5-digit area must be placed in the 3-digit presort tier or residual/basic presort tier of the mailing, or be submitted in a separate mailing.

564.32 Grouping and Packaging Requirements

564.321 Grouping/Packaging in Full 5-Digit Trays. There are no ZIP Code grouping or packaging requirements for full 5-digit trays except for pieces that exceed the width of trays where packaging may be used as the method to maintain the orientation of the pieces within the trays as described in 561.422. It is recommended that mail in full 5-digit trays not be packaged, except as provided in 561.422. However, mailers are permitted to package pieces in full 5-digit trays as provided in 561.22. If packages are prepared, no package labels are required.

564.322 Grouping/Packaging in Full 3-Digit and Full SCF Trays. Within full 3-digit and full SCF trays, pieces for each 5-digit ZIP Code area contained in the tray must be grouped together. Although it is recommended that groups of pieces for 5-digit ZIP Code areas be placed in trays in numeric sequence it is not required (e.g., in a tray containing pieces for ZIP Codes 12345 and 12346, all pieces for 12346 may be grouped in front of the pieces for 12345, but it is preferred that all pieces for 12346 be placed behind the pieces for 12345). The groups of pieces for different 5-digit areas must be delineated by either separator cards or by packaging. Separator cards are the preferred method. For pieces exceeding the width of trays prepared under 561.422, however, separator tabs may be used only if cardboard separators are used to maintain the orientation of pieces in the trays. If packages are prepared, each package must contain only mail for a single 5-digit area. Package labels are not required in full 3-digit and full SCF trays.

564.323 Grouping/Packaging in Less Than Full SCF Trays. Within less than full SCF trays, groups of pieces for each 5-digit ZIP Code area must be secured together into packages as described in 561.22. Each package must contain only mail for a single 5-digit area and must be labeled as a 5-digit package as described in 561.222. Packages for the same 5-digit ZIP Code area must be grouped together in the tray. It is recommended that groups of packages for 5-digit areas be placed in trays in numeric ZIP Code sequence.

564.33 Traying Requirements—5-Digit Presort Tier

564.331 General. The requirements in 561.4 must be met.

564.332 Tray Sortation

a. 5-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray (see 561.43), a 5-digit tray must be prepared for that destination. Trays that are not full are prohibited. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "5DG Z+4 BARCODED" or "5DG Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

DETROIT MI	48235
FCM 5DG Z+4 BARCODED	
NB COMPANY UNION SC	

b. 3-Digit Trays. If, after preparing all possible full 5-digit trays, there are enough pieces remaining to fill a tray for a 3-digit ZIP Code destination, a 3-digit tray must be prepared. Groups of pieces for each 5-digit ZIP Code area within the tray must be delineated by separator tabs or packaging as set forth in 564.322. Trays that are not full as described in 561.43 are prohibited. Trays must be labeled as follows:

(1) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "5DG Z+4 BARCODED" or "5DG Z+4 B/C."
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

PHILADELPHIA PA	191
3C 5DG Z+4 BARCODED	
ROCKET CO ROCHESTER NY	

(2) Other 3-Digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of SCF, followed by 3-digit prefix of pieces in tray (see Exhibit 122.63c or Exhibit 122.63d for name of SCF serving 3-digit ZIP Code area)
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "5DG Z+4 BARCODED" or"5DG Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

NORTHERN VIRGINIA VA	221
3C 5DG Z+4 BARCODED	
ABC MAILING CO ROCHESTER NY	

c. SCF Trays

(1) Trays for SCFs Serving Single 3-Digit Area. If, after preparing all possible full 5-digit and full 3-digit trays, there are pieces remaining for an SCF serving a single 3-digit area listed in Exhibit 122.63c, that are not sufficient to fill a tray, they must be placed in a single 3-digit SCF tray. The minimum quantity of mail for a single 3-digit SCF tray is 10 pieces for a 5-digit ZIP Code area (see 564.31). The pieces in the tray must be secured into packages for 5-digit areas and labeled as described in 564.323 and 561.22. If the tray contains pieces for only one 5-digit ZIP Code area served by the SCF, the tray must be labeled as a 5-digit tray under 564.332a. Trays containing pieces for more than one 5-digit area must be labeled as follows:

Line 1: Name of the SCF, two-letter state abbreviation, followed by 3-digit ZIP Code prefix of pieces in tray (see Exhibit 122.63c)

Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "5DG Z+4 BARCODED" or "5DG Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

MID-FLORIDA FL	327
FCM 5DG Z+4 BARCODED	
ABC MAILING CO BAKERSFIELD	
CA	

(2) Trays for SCFs Serving Multiple 3-Digit Areas. If, after preparing all possible full 5-digit and full 3-digit trays, there are pieces remaining for one of the SCFs serving more than one 3-digit area in Exhibit 122.63d, an SCF tray must be prepared. The minimum quantity of mail for SCF trays is 10 pieces for a 5-digit ZIP Code area (see 564.31). Groups of 10 or more pieces per 5-digit ZIP Code area within SCF trays must be delineated by either separator cards or packaging in full trays (see 564.322), and must be packaged and labeled in less than full trays (see 564.323 and 561.22). If the tray contains pieces for only one 3-digit ZIP Code area served by the SCF, the tray must be labeled as a 3-digit tray under 564.332b. If the tray contains pieces for only one 5-digit ZIP Code area served by the SCF, the tray must be labeled as a 5-digit tray under 564.332a. Trays containing pieces for multiple 3-digit areas served by the SCF must be labeled as follows:

Line 1: Letters "SCF," followed by name of SCF, two-letter state abbreviation of SCF, and 3-digit ZIP Code prefix for SCF shown in Exhibit 122.63d
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "5DG Z+4 BARCODED" or "5DG Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

SCF SAN ANTONIO TX	780
3C 5DG Z+4 B/C	
DR PATERNO BIGFOOT TX	

564.4 Sortation Requirements--3-Digit Presort Tier

564.41 Minimum Quantity Per 3-Digit Area. There must be at least 50 pieces for each 3-digit ZIP Code area contained in the 3-digit presort tier. Residual/basic packages containing fewer than 50 pieces per 3-digit ZIP Code area may be trayed with qualifying mail in SCF trays as in 564.522. Such residual/basic pieces are considered part of the residual/basic presort tier for rate qualification and documentation purposes.

564.42 Grouping and Packaging Requirements

564.421 Grouping/Packaging in 3-Digit Trays. There are no grouping or packaging requirements for 3-digit trays except for pieces that exceed the width of trays where packaging is used as the method to maintain the orientation of the pieces within the trays as provided in 561.422. It is recommended that mail in 3-digit trays not be packaged (except as in 561.422). However, mailers are permitted to package pieces in 3-digit trays as provided in 561.22. If pieces are packaged, package labels are not required.

Note: All 3-digit trays must be full (see 564.432a and 561.43) and there must be at least 50 pieces for each 3-digit ZIP Code area (see 564.41). If, due to the size of the mailpieces, a full tray holds less than 50 pieces and it is not possible for all the pieces for the same 3-digit ZIP Code area to be placed in the same tray, the remaining pieces must be placed in another full 3-digit tray if possible. In all instances where it is not possible to fill another 3-digit tray with the pieces remaining from a full 3-digit tray, the remaining pieces must be placed in an SCF tray.

564.422 Grouping/Packaging in SCF Trays

a. Full SCF Trays. In full SCF trays, each group of 50 or more pieces for a 3-digit ZIP Code area contained in the tray must be grouped together (see the note in 564.422b). Although it is recommended that groups of pieces for 3-digit ZIP Code areas be placed in trays in numeric sequence, it is not required (e.g., in a tray containing pieces for 137 and 138, it is permissible for all the pieces for 138 to be grouped in front of the pieces for 137, but it is recommended that the pieces for 138 be placed behind the pieces for 137). For pieces that exceed the width of trays and for which packaging is used to maintain the orientation of the pieces in the tray as described in 561.422, the pieces in the tray must be packaged so that only mail for the same 3-digit ZIP Code area is within a package. Otherwise, packaging is permissible but not required. Packages must contain only mail for a single 3-digit ZIP Code area. Package labels are not required in full SCF trays.

b. Less Than Full SCF Trays. Within less than full SCF trays, the groups of pieces for each 3-digit ZIP Code area contained in the tray must be secured together into packages as described in 561.221. Each package must contain only mail for a single 3-digit area and must be labeled as a 3-digit package as described in 561.222. Packages for the same 3-digit ZIP Code area must be grouped together in the tray. It is recommended that groups of packages for 3-digit areas be placed in trays in numeric ZIP Code sequence.

Note: There must be at least 50 pieces for each qualifying 3-digit ZIP Code area (see 564.41) placed in SCF trays. Mailers must place pieces for the same 3-digit ZIP Code in the same tray whenever possible. If, due to the size of the mailpieces, a full tray holds less than 50 pieces and it is not possible for all the pieces for the same 3-digit ZIP Code area to be placed in the same tray, the group of 50 pieces may be split between trays. Splitting of groups of 50 or more pieces for a 3-digit area between trays when necessary to meet full tray requirements in 564.432 is also permissible. (For example, where 450 pieces fill a tray, and there are 200 pieces for 137, 225 pieces for 138, and 55 pieces for 139, 25 pieces for ZIP Code 139 may be placed at the end of one SCF tray and 30 pieces in another less than full SCF tray for 139.)

564.43 Traying Requirements

564.431 General. The requirements in 561.2 must be met.

564.432 Tray Sortation

a. 3-Digit Trays. When there are sufficient pieces for the same 3-digit ZIP Code area to fill a tray, a 3-digit tray must be prepared. Trays that are not full are

prohibited. Each 3-digit tray must contain at least 50 pieces. See also the note in 564.421 concerning mailings where less than 50 pieces may fill a tray. Trays must be labeled as follows:

(1) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "3DG Z+4 BARCODED" or "3DG Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

BINGHAMTON NY	139
3C 3DG Z+4 BARCODED	
ABC CO ROCHESTER NY	

(2) Other 3-Digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of SCF, followed by 3-digit prefix of pieces in tray (see Exhibit 122.63c or Exhibit 122.63d for name of SCF serving 3-digit ZIP Code area)
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "3DG Z+4 BARCODED" or "3DG Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

NORTHERN VIRGINIA VA	221
3C 3DG Z+4 BARCODED	
ABC MAILING CO ROCHESTER NY	

b. SCF Trays

(1) SCF Trays for SCFs Serving Single 3-Digit Area. If, after preparing all possible full 3-digit trays, there are pieces remaining for an SCF serving a single 3-digit area listed in Exhibit 122.63c that are not sufficient to fill a tray, they must be placed in a single 3-digit SCF tray. For qualifying mail the minimum quantity of mail for a single 3-digit SCF tray is 50 pieces (see 564.41). See the note in 564.422 for an exception to the requirement for 50 pieces in the same tray. The pieces in the tray must be secured into 3-digit packages and labeled as described in 564.422 and 561.22. Single 3-digit SCF trays must be labeled as follows:

Line 1: Name of SCF, two-letter state abbreviation, followed by 3-digit ZIP Code prefix of pieces in tray (see Exhibit 122.63c)
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "3DG Z+4 BARCODED" or "3DG Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

MID-FLORIDA FL	327
FCM 3DG Z+4 BARCODED	
NBT CO BAKERSFIELD CA	

Note: Single 3-digit SCF trays containing only residual/basic (basic rated) pieces may contain fewer than 50 pieces when the residual preparation option in 564.522 is used.

(2) SCF Trays for SCFs Serving Multiple 3-Digit Areas. If, after preparing all possible full 3-digit trays, there are pieces remaining for one of the SCFs listed in Exhibit 122.63d serving more than one 3-digit area, an SCF tray must be prepared. The minimum quantity of qualifying mail for an SCF tray is 50 pieces for a 3-digit area (see 564.41). See the note in 564.422 and the note to this section for exceptions to the requirement for 50 pieces per 3-digit area in the same tray. If the tray contains pieces for only one 3-digit ZIP Code area served by the SCF, the tray must be labeled as if it were a 3-digit tray as specified in 564.432a. Trays containing pieces for multiple 3-digit areas served by the SCF must be labeled as follows:

Line 1: Letters "SCF," followed by name of SCF, two-letter state abbreviation of SCF, and 3-digit ZIP Code prefix for SCF shown in Exhibit 122.63d
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "3DG Z+4 BARCODED" or "3DG Z+4 B/C"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

SCF SAN ANTONIO TX	780
FCM 3DG Z+4 BARCODED	
ABC CO PHILADELPHIA PA	

Note: When the residual preparation option in 564.522 is used, SCF trays containing only residual/basic pieces may contain fewer than 50 pieces.

564.5 Sortation Requirements--Residual/Basic Presort Tier

564.51 Definition of Residual/Basic Pieces. Residual/basic pieces are pieces remaining after performing sortations under 564.3 (5-digit presort tier) and/or 564.4 (3-digit presort tier). Accordingly, there are always fewer than 50 pieces for the same 3-digit ZIP Code area within the residual portion of the mailing.

564.52 Sortation Requirements for Residual/Basic Mail. Residual/basic pieces must be prepared in one of the following three ways.

564.521 Option 1: ZIP Code Sequencing and Listing. Under this option, residual pieces must be placed in residual trays in 3-digit ZIP Code sequence. Pieces in less than full residual trays must be secured in 3-digit packages and labeled as a 3-digit package as provided in 361.22. Mailers must provide a listing by 3-digit area of the various rate qualification categories as described in 564.624a (see also 564.2). Trays must be labeled as follows:

Line 1: Word "RESIDUAL" followed by 3-digit ZIP Code range of pieces in tray
Line 2: Appropriate class or contents designation (FCM or 3C as appropriate) followed by words "ZIP+4 BARCODED"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL 010-590
FCM ZIP+4 BARCODED
XYZ CORP BIGFOOT TX

564.522 Option 2: Placement in SCF Trays with Qualifying Mail. Under this option, whenever there is more than one piece to a 3-digit area, residual pieces must be secured in 3-digit packages and labeled as 3-digit packages as described in 561.22. Residual 3-digit packages (containing fewer than 50 pieces for a 3-digit area) and residual single pieces must be placed in SCF trays containing qualifying 3-digit pieces (groups of 50 or more pieces per 3-digit ZIP Code area) wherever possible. Where there is no SCF tray containing qualifying 3-digit mail, an SCF tray containing only a residual piece, package, or packages must be prepared. SCF trays containing only residual mail must be prepared and labeled in the same way as SCF trays containing qualifying 3-digit mail as described in 564.432b.

564.523 Option 3: Physical Separation by Rate Qualification. Under this option, residual pieces bearing correct ZIP+4 barcodes or delivery point barcodes must be separately trayed from residual pieces without correct ZIP+4 or delivery point barcodes. Pieces that do not bear ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct numeric ZIP+4 code in the address and meeting the requirements of 540 are separately trayed from other pieces. Within each of the resulting trays, the pieces must be separated into groups of 100 pieces. The groups of 100 must be delineated by separator cards (see 561.3). When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages in accordance with 561.221 within each group of 100 pieces. When there are less than 100 pieces in a group at the end of the last tray for any of the three types of trays (those containing the ZIP+4 barcoded or delivery point barcoded pieces, those containing the pieces with correct numeric ZIP+4 codes meeting the requirements of 540, and those containing other pieces) the actual number of pieces in the group must be written on the separator card. The total number of residual pieces in each rate category must be added to the summary portion of the documentation required in 564.625. Option 3 residual trays must be labeled as follows:

a. Trays Containing ZIP+4 or Delivery Point Barcoded Mail

Line 1: Word "RESIDUAL"
Line 2: Appropriate class or contents designation (FCM or 3C as appropriate) followed by words "ZIP+4 BARCODED"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL
3C ZIP+4 BARCODED
XYZ CORP AUSTIN TX

b. Trays Containing Pieces Not ZIP+4 or Delivery Point Barcoded But Bearing Correct Numeric ZIP+4 Code in Address and Meeting Requirements of 540

Line 1: Word "RESIDUAL"
Line 2: Appropriate class or contents designation (FCM or 3C) followed by words "ZIP+4"
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL
FCM ZIP+4
XYZ CORP AUSTIN TX

c. Trays Containing Pieces Not ZIP+4 or Delivery Point Barcoded and Not Qualifying for ZIP+4 Rates

Line 1: Word "RESIDUAL"
Line 2: Appropriate class or contents designation (FCM or 3C
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:

RESIDUAL
FCM
XYZ CORP AUSTIN TX

564.6 Documentation Requirements

564.61 When Not Required. The documentation described in 564.62 is not required if every piece in the mailing bears the correct ZIP+4 barcode or correct delivery point barcode and either of the following applies:

a. Postage is affixed to each piece at the exact rate of postage for which it qualifies.

b. Each piece in the mailing is of identical weight and the trays in each presort tier are physically separated from each other at the time of mailing to allow weight verification of postage.

Note: This condition cannot apply if option 2 for preparation of residual mail (564.522) is used.

564.62 When Required

564.621 Criteria. Except for mailings described in 564.61, the following information must be provided with each mailing. The format detailed in 564.622, 564.623, 564.624, and 564.625 must be followed. At the mailer's option, additional information showing the trays in which the pieces appear may also be included.

564.622 Information Required for 5-Digit Presort Tier Sorted Under 564.3

a. Listing

(1) The documentation must list the number of pieces to each 5-digit ZIP Code area under a column heading that indicates the rate of postage for which the pieces qualify based upon the class of mail (First-Class

5-digit ZIP+4 Barcoded rate, or third-class 5-digit ZIP+4 Barcoded rate).

(2) The documentation must show a cumulative line total at the end of each 5-digit line listing. This is the total of all pieces listed for the particular 5-digit area plus all the pieces listed for preceding 5-digit areas.

b. Column Totals. The total number of pieces listed in each of the 5-digit line listings must be shown following the entry for the last 5-digit ZIP Code area in the 5-Digit presort tier of the mailing.

564.623 Information Required for 3-Digit Presort Tier Sorted Under 564.4

a. Listing. For each group of 50 or more pieces to a 3-digit ZIP Code area placed in 3-digit or SCF trays, the documentation must list by 3-digit ZIP Code:

(1) Number of ZIP+4 Barcoded or Delivery Point Barcoded Pieces. These must be listed under a column heading that indicates the rate for which they qualify based upon the class of mail submitted (First-Class 3-digit ZIP+4 Barcoded rate, or third-class 3-digit ZIP+4 Barcoded rate).

(2) Number of Pieces Without a ZIP+4 Barcode or Delivery Point Barcode Bearing a Correct Numeric ZIP+4 Code and Meeting Requirements of 540. These must be listed under a column heading that indicates the rate for which they qualify based upon the class of mail submitted (First-Class ZIP+4 Presort rate, or third-class 3/5 ZIP+4 rate).

(3) Number of Pieces Without ZIP+4 Barcode or Delivery Point Barcode Not Qualifying for ZIP+4 Rates. These must be listed under a column heading that indicates the rate for which they qualify based upon the class of mail submitted (First-Class Presorted First-Class rate, or third-class 3/5 presort rate).

Note: This column includes pieces with a 5-digit numeric ZIP Code as well as pieces without a ZIP +4 or delivery point barcode that contain a correct numeric ZIP +4 code, but do not meet the OCR readability requirements in 540 .

(4) Cumulative Line Total. This is the total of all pieces listed for the particular 3-digit area plus all the pieces listed for preceding 3-digit areas.

b. Column Totals. The total number of pieces in each of the rate category column listings in 564.623a(1) through 564.623a(3) must be shown following the entries for the last 3-digit ZIP Code area in the 3-digit presort tier of the mailing.

564.624 Information Required for Residual/Basic Presort Tier Sorted Under 564.5

a. Pieces Sorted Under Option 1: ZIP Code Sequencing and Listing

(1) Listing. For each group of less than 50 pieces to a 3-digit ZIP Code area, mailers must list by 3-digit ZIP Code:

(a) Number of ZIP+4 Barcoded or Delivery Point Barcoded Pieces. These must be listed under a column heading that indicates the rate for which they qualify based upon the class of mail (First-Class Nonpresorted Barcoded rate if qualified for the card rate, or First-Class Nonpresorted ZIP+4 rates if other than a card, or third-class basic ZIP+4 Barcoded rate).

(b) Number of Pieces Without ZIP+4 Barcode or Delivery Point Barcode Bearing Correct ZIP+4 Numeric Code and Meeting Requirements of 540. These must be listed under a column heading that indicates the rate for which they qualify based upon the class of mail (First-Class Nonpresorted ZIP+4 rates or third-class basic ZIP+4 rate).

(c) Number of Pieces Without ZIP+4 Barcode or Delivery Point Barcode Not Qualifying for ZIP+4 Rates. These must be listed under a column heading that indicates the rate for which they qualify based upon the class of mail (First-Class single-piece rate or third-class basic presort rate).

Note: This column includes pieces with a 5-digit numeric ZIP Code as well as pieces without a ZIP + 4 or delivery point barcode that contain a correct numeric ZIP + 4 code, but do not meet the OCR readability requirements in 540.

(d) Cumulative Line Totals. This is the total of all pieces listed for the particular 3-digit area plus all the pieces listed for preceding 3-digit areas.

(2) Column Totals. The total number of pieces in each of the rate category column listings in 564.624a(1)(a) through 564.624a(1)(c) must be shown following the entries for the last 3-digit ZIP Code area in the residual/basic presort tier. See Exhibit 564.624a.

b. Pieces Sorted Under Option 2: Placement in SCF Trays with Qualifying Mail. The 3-digit ZIP Code listing and the totals described in 564.624a, must be provided for the nonqualifying groups of less than 50 pieces for a 3-digit area that are placed in SCF trays (see 564.522). This listing must either be presented in a separate, residual/basic presort tier section of the documentation as illustrated in Exhibit 564.624a, or be incorporated, in ZIP sequence, in a combined 3-digit and residual/basic presort tier section in the documentation as illustrated in Exhibit 564.624b.

c. Pieces Sorted Under Option 3: Physical Separation. No listing is required for the residual portion prepared as described in 564.523. The manual counts of pieces in the trays for each rate category of residual, however, must be added to the summary section of the documentation as described in 564.625. See Exhibit 564.624c.

564.625 Summary

a. Permit Imprint Mailings

(1) Rate Summary. This summary must list each rate category at which any pieces in the mailing are claimed from the applicable column totals in the 5-digit, 3-digit, and residual/basic presort tier documentation sections. (For residual/basic mail sorted under Option 3 (564.523), this information is obtained from the manual counts of pieces in the separate trays for each rate category.) For each rate category listed, the summary must show: the total number of pieces claimed; the applicable rate of postage; and the postage charges for that rate category. A grand total of the postage charges for all the rate categories in the entire mailing must also

be shown. This grand total shows the amount of postage to be deducted from the permit imprint account.

(2) Percentage of Barcoded Pieces Summary. The summary must list the total number of pieces in the mailing that bear a ZIP+4 barcode or delivery point barcode meeting the requirements of 550 and show the total number pieces that do not. The percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing must be shown.

b. First- and Third-Class Metered and Precanceled Stamp Mailings

(1) Rate Summary. This summary must list each rate category at which any pieces in the mailing are claimed from the applicable column totals in the 5-digit, 3-digit, and residual/basic presort tier documentation sections. (For residual/basic mail sorted under Option 3 (564.523), this information is obtained from the manual counts of pieces in the separate trays for each rate category.) For each rate category listed the summary must show: the total number of pieces claimed; the amount of additional postage due for each piece at that rate category (when the amount of postage affixed is less than the rate of postage owed); and the total postage due for pieces claimed at that rate (the total number of pieces at that rate category times the amount of postage due per piece). A grand total of the additional postage charges due for all the rate categories in the entire mailing must also be shown. This grand total shows the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account.

(2) Percentage of Barcoded Pieces Summary. This summary must list the total number of pieces in the mailing that bear a ZIP+4 barcode or delivery point barcode meeting the requirements of 550 and the total number pieces that do not. The percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing must also be shown.

570 Mailing

Automation-compatible mailings must be presented for acceptance by the Postal Service as provided for the specific class of mail by 370, 450, and 650.

580 Postage Payment

Postage for automated mail must be paid as provided for the specific class of mail by 380, 460, and 660. Mailers must annotate the mailing statement required to be submitted with each mailing with the appropriate Chapter 5 section under which the mailing was prepared (562.1, 562.2, 563.1, 563.2, or 564 as appropriate). This section number must be written in the upper right corner of the front of the mailing statement.

590 Ancillary Services

Ancillary services are provided to automated mail as provided for the specific class of mail by 390, 470, and 690.

Exhibit 561.421a. Pieces That Fit Trays

Exhibit 561.421b. Pieces That Exceed the Height of Trays

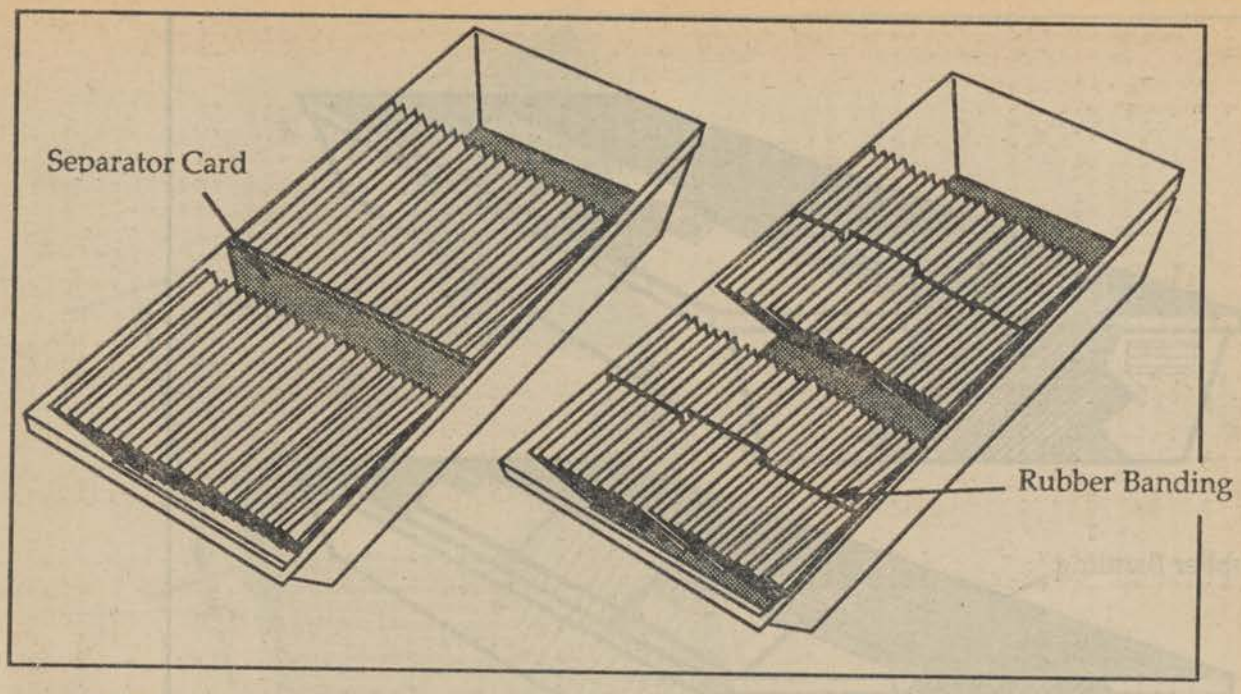

Exhibit 561.422a, Pieces That Exceed the Width, But Not the Height, of Trays,

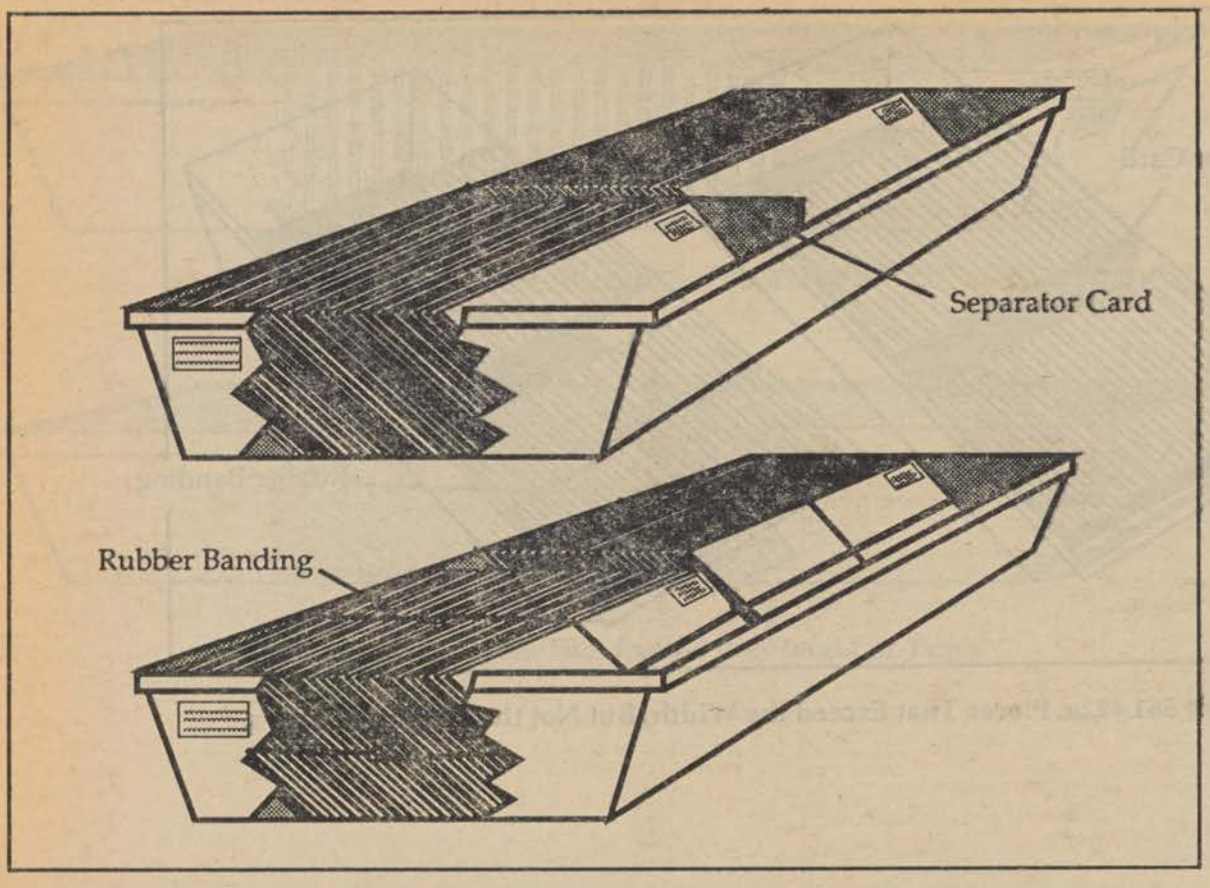

Exhibit 561.422b, Pieces That Exceed the Width and Height of Trays

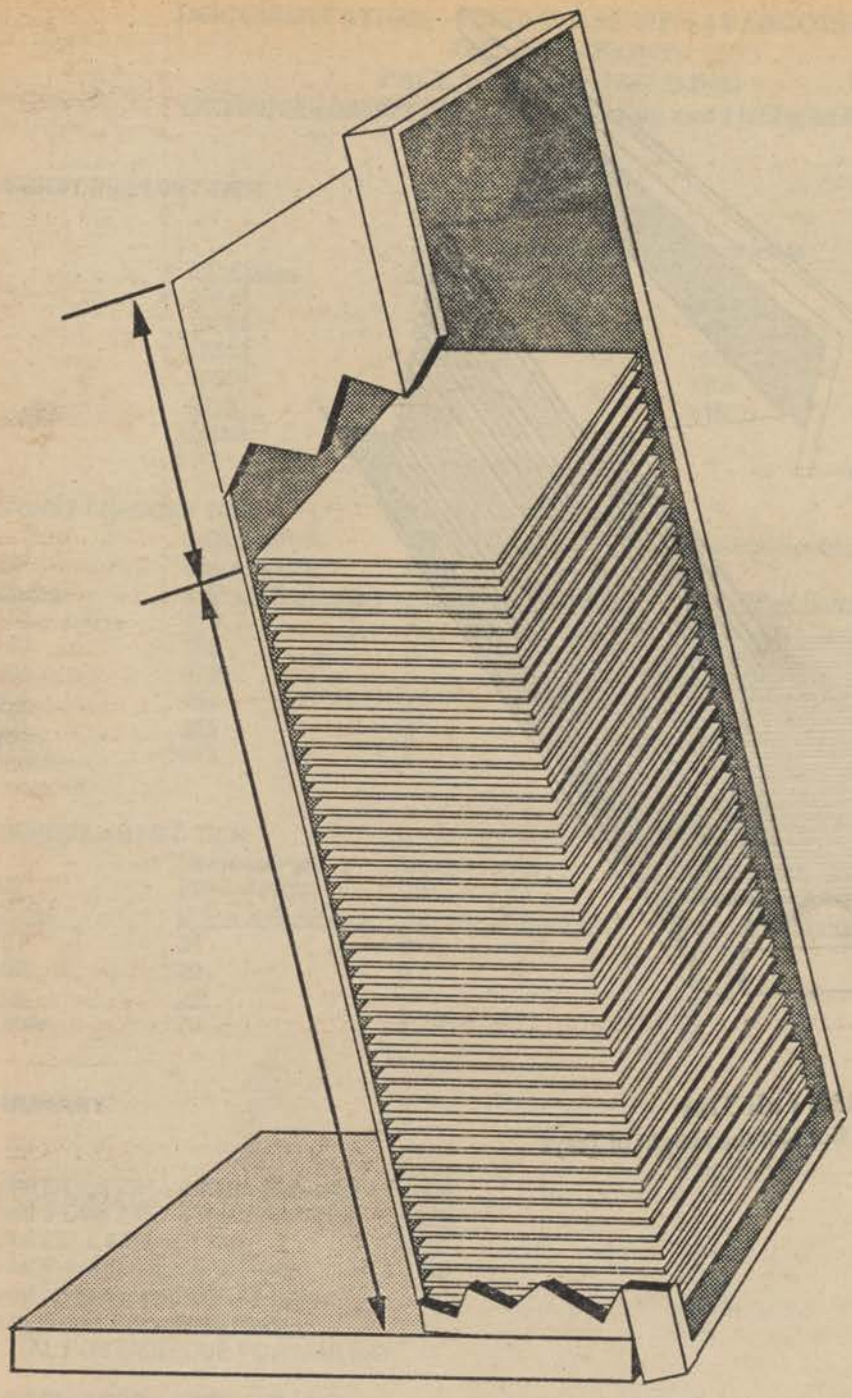

Exhibit 561.431, Full Tray
Pieces That Do Not Exceed the Height or Width of Trays

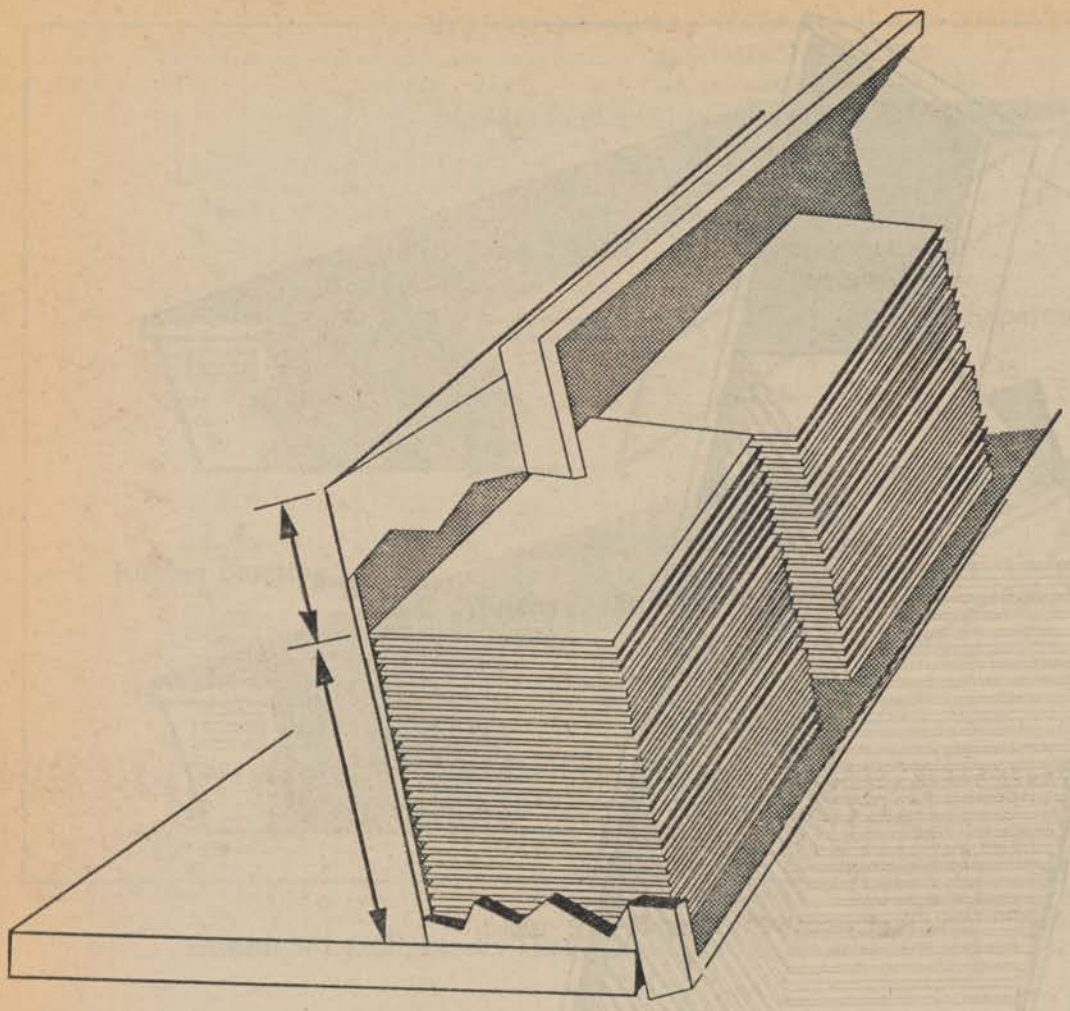

Exhibit 561.432, Full Tray
Pieces Exceeding the Width But Not the Height of Trays

DOCUMENTATION – FIRST-CLASS ZIP + 4 BARCODED RATE
PERMIT IMPRINT
PACKAGE-BASED MAILING
OPTION 1 and OPTION 2a - Sequencing and Listing of Residual

5-DIGIT PRESORT TIER

ZIP Codes	5-Digit ZIP+4 Barcoded Rate (ZIP+4 Barcoded)	Cumulative Total
12345	454	454
16324	118	572
17303	111	683
30564	522	1205
40231	460	1665
Totals	1665	

3-DIGIT PRESORT TIER

ZIP Codes	3-Digit ZIP+4 Barcoded Rate (ZIP + 4 Barcoded)	ZIP + 4 Presort Rate (Not ZIP+4 Barcoded)*	Presort First-Class Rate (Not ZIP+4 Barcoded)**	Cumulative Total
155	410	0	15	425
163	105	0	4	534
304	315	1	5	855
306	454	1	24	1334
401	355	0	32	1721
Totals	1639	2	80	

RESIDUAL/BASIC TIER

ZIP Codes	Nonpresorted ZIP + 4 Rate (ZIP + 4 Barcoded)	Nonpresorted ZIP + 4 Rate (Not ZIP+4 Barcoded)*	Single Piece First-Class Rate (Not ZIP+4 Barcoded)**	Cumulative Total
321	36	0	2	38
402	20	0	5	63
705	23	1	7	94
Totals	79	1	14	

SUMMARY

		Postage Rate (Per Piece)	Postage Charges
Total 5-Digit ZIP + 4 Barcoded Rate	1665	0.233	$ 387.945
Total 3-Digit ZIP + 4 Barcoded Rate	1639	0.239	391.721
Total ZIP + 4 Presort Rate	2	0.242	.484
Total Presort First-Class Rate	80	0.248	19.84
Total Nonpresorted ZIP + 4 Rate	80	0.276	22.08
Total Single Piece Rate Pieces	14	0.29	4.06
TOTAL POSTAGE DUE FOR MAILING			$ 826.13

Total Pieces With a ZIP + 4 Barcode:	3383
Total Pieces Without a ZIP + 4 Barcode:	97
TOTAL PIECES IN THE MAILING:	3480

Percentage of ZIP + 4 Barcoded Pieces: 97.21%

* Does NOT include pieces prepared with a window in the barcode clear zone.
** Includes pieces prepared with a window in the barcode clear zone.

Exhibit 564.624a

DOCUMENTATION – FIRST-CLASS ZIP + 4 BARCODED RATE
PERMIT IMPRINT
PACKAGE-BASED MAILING
OPTION 2b - Listing Residual in ZIP Sequence with Qualifying Mail

5-DIGIT PRESORT TIER

ZIP Codes	5-Digit ZIP+4 Barcoded Rate (ZIP+4 Barcoded)	Cumulative Total
12345	454	454
16324	118	572
17303	111	683
30564	522	1205
40231	460	1665
Totals	1665	

3-DIGIT PRESORT TIER

ZIP Codes	3-Digit ZIP+4 Barcoded Rate (ZIP+4 Barcoded)	Nonpresorted ZIP+4 Rate (ZIP+4 Barcoded)	ZIP + 4 Presort Presort Rate (Not ZIP+4 Barcoded)*	Presorted First-Class (Not ZIP+4 Barcoded)**	Nonpresorted ZIP + 4 Rate (Not ZIP+4 Barcoded)*	Single Piece Rate (Not ZIP+4 Barcoded)**	Cumulative Total
155	410	0	0	15	0	0	425
163	105	0	0	4	0	0	534
304	315	0	1	5	0	0	855
306	454	0	1	24	0	0	1334
321	0	36	0	0	0	2	1372
401	355	0	0	32	0	0	1759
402	0	20	0	0	0	5	1784
705	0	23	0	0	1	7	1815
Totals	1639	79	2	80	1	14	

SUMMARY

		Postage Rate (Per Piece)	Postage Charges
Total 5-Digit ZIP + 4 Barcoded Rate	1665	0.233	$ 387.945
Total 3-Digit ZIP + 4 Barcoded Rate	1639	0.239	$ 391.721
Total ZIP + 4 Presort Rate	2	0.242	.484
Total Presorted First-Class Rate	80	0.248	19.84
Total Nonpresorted ZIP + 4	80	0.276	22.08
Total Single Piece Rate	14	0.29	4.06
TOTAL POSTAGE DUE FOR MAILING			$ 826.13

Total Pieces With a ZIP + 4 Barcode:	3383
Total Pieces Without a ZIP + 4 Barcode:	97
TOTAL PIECES IN THE MAILING:	3480

Percentage of ZIP + 4 Barcoded Pieces in the Mailing 97.21%

* Does NOT include pieces prepared with a window in the barcode clear zone.
** Includes pieces prepared with a window in the barcode clear zone.

Exhibit 564.624b

DOCUMENTATION – FIRST-CLASS ZIP + 4 BARCODED RATE
PERMIT IMPRINT
PACKAGE-BASED MAILING
OPTION 3 - Physical Separation of Residual

5-DIGIT PRESORT TIER

ZIP Codes	5-Digit ZIP+4 Barcoded (ZIP + 4 Barcoded)	Cumulative Total
12345	454	454
16324	118	572
17303	111	683
30564	522	1205
40231	460	1665
Totals	1665	

3-DIGIT PRESORT TIER

ZIP Codes	3-Digit ZIP+4 Barcoded Rate (ZIP + 4 Barcoded)	ZIP + 4 Presort Rate (Not ZIP+4 Barcoded)*	Presort First-Class Rate (Not ZIP+4 Barcoded)**	Cumulative Total
155	410	0	15	425
163	105	0	4	534
304	315	1	5	855
306	454	1	24	1334
401	355	0	32	1721
Totals	1639	2	80	

SUMMARY

		Postage Rate (Per Piece)	Postage Charges
Total 5-Digit ZIP + 4 Barcoded Rate	1665	0.233	$ 387.945
Total 3-Digit ZIP + 4 Barcoded Rate	1639	0.239	391.721
Total ZIP + 4 Presort Rate	2	0.242	.484
Total Presort First-Class Rate	80	0.248	19.84
*** Total Nonpresorted ZIP + 4 Rate	80	0.276	22.08
*** Total Single Piece Rate Pieces	14	0.29	4.06
TOTAL POSTAGE DUE FOR MAILING			$ 826.13

*** Total Pieces With a ZIP + 4 Barcode:	3383
*** Total Pieces Without a ZIP + 4 Barcode:	97
*** TOTAL PIECES IN THE MAILING:	3480

Percentage of ZIP + 4 Barcoded Pieces: 97.21%

* Does NOT include pieces prepared with a window in the barcode clear zone.
** Includes pieces prepared with a window in the barcode clear zone.
*** Obtained from or includes manual counts of groups of 100 pieces as described in DMM 564.523 and 564.624c.

Exhibit 564.624c

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661.223 Combination of Rates. Postage for mailings that include pieces subject to pound rates and pieces subject to minimum per-piece charges may be paid by meter stamp. Postage may also be paid by permit imprint under a manifest mailing system, optional procedure, or alternate mailing system procedure when authorized by the general manager, rates and classification center (see 145.7, 145.8, and 145.9).

661.23 Single-Piece Weight. The weight of a single piece must be entered on the appropriate mailing statement as "nonidentical" whenever a mailing contains pieces having different weights. In addition, the mailer must complete the appropriate items on the mailing statement as usual to show the pounds and/or pieces and the corresponding postage amounts at the applicable rate levels, and the total pounds, pieces, and postage for the entire mailing. Bulk third-class mailings of nonidentical weight pieces may be paid by permit imprint only after specific authorization by the general manager, rates and classification center (see 145.7, 145.8, or 145.9).

661.3 Bulk Mailings at ZIP+4 and ZIP+4 Barcoded Rates

661.31 Permit Imprint. See 145.

661.311 Identical-Weight Pieces. Identical-weight mailings may have postage paid by permit imprint. Mailings at the 3/5 ZIP+4, basic ZIP+4, 5-digit ZIP+4 Barcoded, 3-digit ZIP+4 Barcoded, and basic ZIP+4 Barcoded rates must be accompanied by the documentation required in 624.446, 624.546, and 624.645 or, if Chapter 5 preparation is used, by 562.16, 562.25, 563.16, 563.24, or 564.6.

661.312 Nonidentical-Weight Pieces. Pieces of nonidentical-weight may be paid by permit imprint only under a manifest mailing system, optional procedure, or alternate mailing system procedure authorized by the general manager, rates and classification center (see 145.7, 145.8, and 145.9).

661.32 Meter Stamps

661.321 General. Meters may be used to pay postage for mailings of both identical weight and nonidentical weight pieces. Postage may be paid by either of the methods described in 661.322 and 661.323 (see 144 for additional information on postage meters).

661.322 Correct Postage Affixed to Each Piece

a. 3/5 ZIP+4 and Basic ZIP+4 Mailings. Pieces qualifying for the 3/5 ZIP+4 rate, the 3/5 presort rate, the basic ZIP+4 rate, and basic presort rate are each metered at the rate for which they qualify. (See 624.24, 628.13, and 628.24 for documentation requirements, or, if Chapter 5 is used, 562.16 and 562.25.)

b. ZIP+4 Barcoded Mailings. Pieces qualifying for the 5-digit ZIP+4 Barcoded rate, the 3-digit ZIP+4 Barcoded rate, the basic ZIP+4 Barcoded rate, the 3/5 ZIP+4 rate, the 3/5 presort rate, the basic ZIP+4 rate, and the basic presort rate are each metered at the rate for which they qualify. (See 624.24, 628.13, and 628.34 for documentation requirements, or, if Chapter 5 is used, 563.16, 563.24, or 564.6.)

661.323 Lowest Rate in Mailing Affixed to Each Piece

a. 3/5 ZIP+4 and Basic ZIP+4 Mailings. All pieces may have metered postage affixed at the 3/5 ZIP+4 rate. Additional postage for pieces subject to the basic presort rate must be determined from the documentation required to be submitted with each mailing as specified in 624.24, 628.13, 628.24, or if Chapter 5 is used, 562.16 or 562.25. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

b. ZIP+4 Barcoded Mailings

(1) Where a 5-digit presort tier is included in the mailing, all pieces may have metered postage affixed at the 5-digit ZIP+4 Barcoded rate. Additional postage for pieces subject to the 3-digit Barcoded rate, basic Barcoded rate, 3/5 ZIP+4 rate, 3/5 presort rate, basic ZIP+4 rate, and basic presort rate, must be determined from the documentation required to be submitted with each mailing as specified in 624.24, 628.13, and 628.34, or if Chapter 5 is used, 563.16, 563.24, or 564.6. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

(2) Where a mailing prepared under 628.36, 563.1, 563.2, or 564 does not include a 5-digit presort tier, all pieces may be metered at the 3-digit ZIP+4 Barcoded rate, and additional postage for pieces subject to the 3/5 ZIP+4 rate, 3/5 presort rate, basic Barcoded rate, basic ZIP+4 rate, and basic presort rate, must be determined from the documentation and paid as described above.

661.324 Neither Lowest Rate Nor Correct Postage Affixed to Each Piece

a. General. Where it is not practicable for the mailer to (1) affix the exact postage to each piece as prescribed in 661.322 or (2) to affix the lowest postage rate to all pieces in the mailing as prescribed in 661.323, postage for the mailing is affixed to all pieces as provided in 661.324b and 661.324c.

Exception: If precanceled stamps are not available at either the lowest rate or at the exact rate of postage for ZIP+4 and ZIP+4 Barcoded rate mailings, the procedures in 661.33 may be followed for precanceled stamp mailings at these rates provided the same denomination of precanceled stamp is affixed to each piece in the mailing.

b. Adding Postage. Additional postage must be paid based on the difference between the lowest rate affixed to any piece in the mailing and the appropriate

rate for each rate level in the mailing. No refund is paid on any piece where postage is affixed at a rate higher than the lowest rate claimed for or affixed to any piece. For example, if a ZIP+4 Barcoded mailing contains pieces bearing ZIP+4 Barcoded postage, 3/5 presort rate postage, 3/5 ZIP+4 postage, and basic ZIP+4 postage, postage for the mailing is assessed based on the difference between the ZIP+4 Barcoded rate and the rate for which each piece qualifies according to the documentation required for ZIP+4 Barcoded rate mailings.

c. Payment. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F-1.

661.33 Precanceled Stamps or Precanceled Stamped Envelopes. The requirements described in 661.32 also apply to mailings with precanceled postage. (See 143 for additional information on precanceled postage methods.) Mailers at ZIP+4 and ZIP+4 Barcoded rates should be advised that precanceled stamps may not be available at all applicable rate denominations. Precanceled stamp mailers may affix a nondenominated precanceled stamp (if available) to each piece in the mailing, or a precanceled stamp of a denomination less than the applicable ZIP+4 barcoded rate (provided the precanceled stamps do not contain an inappropriate rate marking) to each piece in the mailing. The same denomination of stamp must be affixed to each piece in the mailing. Mailers must pay the additional postage totaling the difference between the face value of the precanceled stamp and the amount of actual postage owed for each piece in the amount documented under 624.24, 628.13, and 628.34, or 563.16, 563.24, or 564.6. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F-1, 524.

662 Mailing Statements

662.1 General. The mailer must complete, sign, and present a mailing statement with each third-class mailing for which postage is paid using a permit imprint or claimed at any bulk rate. The mailer must use the appropriate Postal Service form or a facsimile approved by the postmaster of the office of mailing.

662.2 Mailer Responsibility. The mailer is responsible for proper payment of postage. See 111.32.

663 Computation Standards

663.1 Weight

663.11 General. Express all weights as decimal pounds (e.g., 1.125 pound) rather than as pounds and ounces. Round weights as directed below. For purposes of this section, the "round off" instruction requires increasing the last digit to be retained by 1 if the digit to its right, which is not to be retained, is 5 or greater; if it is 4 or less, the last digit retained is unchanged. (For example, rounding off 3.376 to two decimal places yields 3.38; while 3.374 yields 3.37.)

663.12 Rate Application

663.121 Single-Piece Rates

a. Pieces Weighing 4 Ounces or Less. For pieces not exceeding 4 ounces (0.25 pound), the single-piece third-class rate is charged per ounce or fraction thereof, based on the weight of each addressed piece. For postage purposes, any fraction of or over an ounce is charged as a whole ounce. The minimum postage per addressed piece is that chargeable for a piece weighing 1 ounce (0.0625 pound).

b. Pieces Weighing More Than 4 Ounces But Less Than 16 Ounces. For pieces weighing more than 4 ounces (0.25 pound), but not more than 16 ounces (1 pound), the single-piece third-class rate is charged per 2-ounce (0.125 pound) unit or fraction thereof, based on the weight of each addressed piece. For postage purposes, any fraction of an ounce over a 2-ounce step is charged as 2 ounces. The minimum postage per addressed piece weighing more than 4 ounces but not more than 6 ounces (0.375 pound) is that chargeable for a piece weighing 6 ounces.

663.122 Keys and Identification Devices. The rate for keys and identification devices is charged per 2-ounce (0.125 pound) unit or fraction thereof for pieces weighing less than 16 ounces (1 pound), based on the weight of each addressed piece. For postage purposes, any fraction of an ounce over a 2-ounce step is charged as 2 ounces. The minimum postage per addressed piece is that chargeable for a piece weighing 2 ounces.

663.123 Bulk Rates

a. Pieces weighing 0.2067 pound (3.3067 ounces) or less, or 0.2082 pound (3.3314 ounces) or less at nonprofit rates, are subject to the minimum applicable rate per addressed piece.

b. Pieces weighing more than 0.2067 pound (3.3067 ounces), or more than 0.2082 pound (3.3314 ounces) at nonprofit rates, are subject to a per-piece charge plus a per-pound charge based on the weight of the addressed piece.

663.13 Weight of a Single Piece

663.131 Computation

a. Identical-Weight Bulk Mailings. In a bulk or presort rate mailing of identical-weight pieces, compute the average weight of a single piece by weighing a sample group of at least 10 randomly selected pieces and dividing the total sample weight by the number of pieces in the sample. Express the weight of a single piece in decimal pounds rounded off, if necessary, to four decimal places. (Note that 1 ounce equals 0.0625 pound.)

federal register

Wednesday
November 13, 1991

Part III

Department of Education

Cooperative Demonstration Program (Correctional Education); Proposed Priorities for Grants to be Made in FY 1992

DEPARTMENT OF EDUCATION

Cooperative Demonstration Program (Correctional Education)

AGENCY: Department of Education.

ACTION: Notice of proposed priorities, required activities, selection criteria, and other requirements for Grants to be made in Fiscal Year 1992.

SUMMARY: The Secretary proposes priorities for awards to be made in fiscal year (FY) 1992 using funds appropriated in FY 1991 under the Cooperative Demonstration Program, which is authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, as amended (Perkins Act). Under the proposed absolute priority, funds under this competition would be reserved for applications proposing to demonstrate model projects that would expand or improve access to quality vocational education programs for individuals in correctional institutions. The Secretary intends to invite particularly those applications that, within the absolute priority of correctional institutions, incorporate the use of video and other technology to deliver educational training or services. The Secretary also proposes to impose requirements related to the proposed priorities and other matters, and proposes to use new selection criteria in evaluating only applications submitted for this competition.

DATES: Comments must be received on or before December 13, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Gail M. Schwartz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4518 Switzer Building, Washington, DC. 20202-7242.

FOR FURTHER INFORMATION CONTACT: Gail M. Schwartz. Telephone: (202) 732-3892. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC. 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Cooperative Demonstration Program provides financial assistance for, among other things, model projects providing improved access to quality vocational education programs for individuals who are members of special populations, including individuals in correctional institutions. This program activity is authorized by section 420A(a)(1) of the Perkins Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. No. 101-392, 104 Stat. 753 (1990)).

The Secretary wishes to highlight, for potential applicants, that this program can help further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. Specifically, the program can contribute to the President's objective—as stated in Track III of the AMERICA 2000 strategy ("Transforming America into 'A Nation of Students'")—of reviewing current federal job training efforts and identifying successful ways of motivating and enabling individuals to receive the comprehensive services, education, and skills necessary to achieve economic independence. The Corrections Education program also directly supports National Education Goal 5—ensuring that every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The designation of correctional education as a priority under the Cooperative Demonstration Program is based on the critical need in this area, which is described in the Senate Committee Report accompanying the fiscal year 1991 appropriations as follows:

> The Committee is concerned over the illiteracy problem pervading our Nation's adult and juvenile correctional facilities. Of the approximately 1 million persons incarcerated in prisons, jails, and juvenile correctional facilities, an estimated 80 percent lack a high school diploma and more than 75 percent are functionally illiterate. [S. Rep. No. 956, 101st Cong., 2d Sess. 265 (1990)]

The development and implementation of projects that provide "live work" experience for criminal offenders to help meet the needs of the institution and provide job skills and literacy training for offenders, can facilitate their successful reentry into society and reduce the likelihood of their return to the criminal justice system. Upon release from correctional facilities, ex-offenders have limited opportunities for meaningful employment. Many youth and adults who return to the community lack necessary basic life skills, including the job seeking and retention skills needed to obtain employment. Without basic literacy and job skills, it is unlikely that these persons will be effectively reintegrated into the community.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priorities

Absolute Priority

Under 34 CFR part 105(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only projects that will demonstrate model projects providing expanded or improved access to quality vocational education for individuals in correctional institutions. These projects must enable offenders to provide "live work" to the institution and to make a transition successfully from institutional environments to community settings. The projects must include life skills, job skills and literacy training and must involve cooperation between private and public agencies.

Invitational Priority

Under 34 CFR 75.105 (c)(1), the Secretary intends to invite applications, within the above absolute priority, for projects that incorporate the use of video and other technologies to deliver educational training or services. These technologies could be particularly appropriate to use in a variety of components of a correctional education program such as:

(a) Tutor training;

(b) Teacher inservice education; or

(c) Alternative degree programs that lead to a diploma or certificate of accomplishment.

Required Activities

The Secretary further proposes to require that any project funded under this competition—

(a) Expand or improve existing vocational education programs in correctional institutions;

(b) Use a curriculum that includes literacy and basic skill training, integrates academic content with

vocational content, and provides for "live work".

(c) Use a combination of transitional services and activities that will assist criminal offenders to make the transition from institution to the community, including job placement assistance, career counseling, and in-house work experience that can be used after release from a correctional facility;

(d) Coordinate with community agencies furnishing transitional supportive services to criminal offenders after their release from correctional institutions, such as individual and family counseling, housing assistance, transportation, and social/cultural activities;

(e) Include a well-designed staff inservice education component to ensure the effective implementation of the program;

(f) Address the special learning needs of all offenders, including men, women, youth, and those who are disabled or elderly;

(g) Include evaluation as an integral part of the project that will produce the kind of data appropriate for the Department of Education's Program Effectiveness Panel (PEP); and

(h) Be of direct service to individuals enrolled in the project.

For the purpose of this project, the term "criminal offender" means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender. The term "correctional institution" means any jail, reformatory, work farm, detention center or halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders. The term "live work" means work performed by a criminal offender during incarceration in a correctional institution that provides the criminal offender with job skills, and that serves the needs of the correctional institution. The term "Program Effectiveness Panel" means a panel of experts in the evaluation of education programs and in other areas of education, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in 34 CFR 786.12 or 787.12.

Criteria for Evaluating Applications

For the fiscal year 1992 grant competition under the Cooperative Demonstration Program (Correctional Education) only, the Secretary proposes to use the following selection criteria and to assign points to the selection criteria as indicated:

(a) *Program factors.* (15 points) The Secretary reviews the quality of the proposed project to assess the extent to which the proposed project will provide—

(1) Vocational and academic education to meet current and projected occupational needs;

(2) Post-release transitional services and follow-up assistance; and

(3) For staff in-service education.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of education;

(2) To use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(3) To base the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data that demonstrates impact from those programs in such factors as—

(i) Student performance and achievement,

(ii) GED completion, and

(iii) Post release employment and/or enrollment in education or training programs.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;⅛

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluaton plan.* (20 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) Provides for an assessment of the effectiveness of the program in improving student outcomes. The assessment should involve comparison of this program to other existing education and training programs or to no treatment for individuals, as appropriate;

(3) Is designed to produce findings that, if positive and significant, can be used in submission of an application to the Department's Program Effectiveness Panel. (Review criteria for the Program Effectiveness Panel are provided in 34 CFR 786.12);

(4) Provides for a random assignment evaluation design, unless circumstances prevent it;

(5) Provides for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects; and

(6) Includes formative evaluation activities to help assess program management improve program operations.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the

other key personnel to be used in the project, including the third-party evaluator;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contain costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Use of non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

Other Requirements

Cost-sharing requirements

(a) A recipient of an award under this competition shall provide not less than 25 percent of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts under this program.

(b) In accordance with subpart G of 34 CFR part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Authority: 20 U.S.C. 2420a(b)(2))

Purchase of Equipment

The projects funded under this competition may not expend Federal funds for equipment as defined in 34 CFR 74.132 and 80.32.

Dissemination

The projects funded under this competition must disseminate their results in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out the purposes of the Act.

(Authority: 20 U.S.C. 2420a(d))

Evaluation Requirements

(a) Each grant recipient shall provide and budget for a third-party evaluation of grant activities.

(b) The evaluation must include both a formative and summative evaluation of the program's operations. The summative evaluation must determine the effectiveness of the program in improving student outcomes while utilizing a random assignment design, unless circumstances prevent it.

(c) The evaluation must be based on student achievement, completion, and placement rates, and replication efforts, such as technical assistance provided to other projects and the dissemination of information and material about or resulting from the project.

(Authority: 20 U.S.C. 2420a)

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Paperwork Reduction Act of 1980

These priorities contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the proposed priorities to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

These priorities would affect the following types of entities eligible to apply for a grant under this program: State educational agencies, local educational agencies, postsecondary educational institutions, institutions of higher education, and other public or private non-profit agencies, institutions, or organizations. The Secretary needs and uses the information to determine whether proposed projects are likely to meet identified national needs. The annual public reporting burden for the collection of information is estimated to average 90 hours per response for 100 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority, selection criteria, required activities, and other requirements.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in Room 4512, Mary E. Switzer Building, 330 C Street, SW., Washington, DC., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 2420a.

(Catalog of Federal Domestic Assistance Number 84.199 Cooperative Demonstration Program)

Dated: August 23, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-27281 Filed 11-12-91; 8:45 am]

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November 13, 1991

Part IV

Department of Education

34 CFR Part 363

The State Supported Employment Services Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 363

RIN 1820-AA86

The State Supported Employment Services Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the State Supported Employment Services Program authorized under title VI, part C of the Rehabilitation Act of 1973, as amended, in order to clarify certain program requirements and make other changes that are needed to increase program effectiveness and flexibility. The changes to the regulatory provisions contained in this NPRM will advance the national education goal of adult literacy and lifelong learning by assisting individuals with severe handicaps to acquire the knowledge and skills necessary to compete in a global economy. The State Supported Employment Services Program assists individuals with severe handicaps, for whom competitive employment would have been unlikely, to acquire the skills and experience needed to achieve and maintain employment in the community.

DATES: Comments must be received on or before December 30, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Neil C. Carney, Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., room 3225 Mary E. Switzer Building, Washington, DC 20202-2899.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Fred Isbister, U.S. Department of Education, 400 Maryland Avenue SW., room 3228 Mary E. Switzer Building, Washington, DC 20202-2899. Telephone: (202) 732-1297. Deaf and hearing impaired individuals may call (202) 732-2848 for TDD services.

SUPPLEMENTARY INFORMATION: The Secretary published a Notice of Intent to Regulate (NOIR) the State supported Employment Services Program on February 13, 1990 (55 FR 5132). The NOIR provided an opportunity for interested parties to recommend to the Secretary the types of burden reduction that would most improve program efficiency and effectiveness and to suggest particular regulatory provisions that warrant removal or revision prior to the publication of specific proposed regulations. A discussion of the major issues raised by these comments follows.

Supported Employment Formula Grant Program

The Rehabilitation Act Amendments of 1986 authorize the formula grant State Supported Employment Services Program. This program provides grants to assist States in developing and implementing collaborative programs with appropriate public agencies and private nonprofit organizations to provide rehabilitation services leading to supported employment for individuals with severe handicaps.

The statute defines "supported employment" to mean competitive work in an integrated work setting with on-going support services for individuals with severe handicaps who traditionally have been unable to perform competitive work or who have performed competitive work only intermittently. It includes transitional employment for individuals with chronic mental illness. The on-going support services authorized under this part are time-limited and are referred to as "traditionally timelimited post-employment service." Individuals in supported employment also need on-going support services of an extended nature to maintain competitive employment in a particular job. These on-going support services are referred to as "extended services" and must be financed from other funding sources.

Major differences between the current regulations and the NPRM are:

(1) In terms of the eligibility of an individual with severe handicaps for supported employment services under the Title VI, part C program, the NPRM clarifies in §363.3(a) that each individual must first be determined to be an "individual with handicaps" in accordance with current law and the criteria in 34 CFR 361.31 and thus to be eligible for the State Vocational Rehabilitation Services Program. The purpose of this change is to ensure that the State Supported Employment Services Program is viewed as supplementary to the State Vocational Rehabilitation Services Program for those individuals with severe handicaps for whom supported employment is an appropriate vocational outcome rather than a totally distinct program that would require a separate eligibility determination.

(2) Three changes are proposed in § 363.4, which specifies authorized supported employment services. The first proposed change clarifies in paragraph (a) that any supplementary evaluation of an individual's potential for supported employment that is done under this program can be done only after the individual's eligibility for the State Vocational Rehabilitation Services Program has been determined. The second proposed change clarifies in paragraph (c) (1) that any vocational rehabilitation service authorized in 34 CFR 361.42 can be provided under this program if needed to maintain an individual's job stability in supported employment. The third proposed change amends paragraph (c) (3) to authorize the availability of discrete post-transition services from the designated State unit if these services are needed to maintain the individual's job placement and are unavailable from an extended services provider. The purpose of this regulatory change is to make available to individuals in supported employment the same kind of services that are available under the State Vocational Rehabilitation Services Program as post-employment services to individuals who have been successfully rehabilitated in placements other than supported employment.

(3) The NPRM would remove all regulatory provisions relating to planning grants in current §§ 363.5, 363.10(b), and 363.51(b) because planning grants under this program were authorized by statute in fiscal year 1987 only. These provisions are therefore obsolete.

(4) The NPRM in proposed § 363.5(a) would amend the specification of Education Department General Administrative Regulates (EDGAR) that are applicable to this program by removing from the list regulations that are no longer applicable [Parts 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations) and 78 (Education Appeal Board)] and by adding new regulations that were developed since the publication of final regulations for this program in 1987. The added regulations are Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 [Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)], and Part 86 (Drug Free Schools and Campuses).

(5) The NPRM in proposed § 363.5(c) would make applicable to the State Supported Employment Services

Program certain additional regulatory provisions governing the State Vocational Rehabilitation Services Program in 34 CFR part 361 in order to ensure that the requirements for supported employment services under the two programs are more consistent. These regulations cover the eligibility requirements in § 361.31, certification requirements in § 361.35, case record requirements in § 361.39, scope of authorized vocational rehabilitation services in § 361.42, and the financial needs provisions in § 361.47(a).

(6) Two changes are proposed in the definition of "competitive work" in proposed § 363.6(c)(2)(i). (The definitions for this program, currently located in § 363.7, are relocated to proposed § 363.6 in this NPRM.) The current requirement that individuals in supported employment must average a minimum of 20 hours of work per week per pay period at the time of job placement would be removed. The proposed regulations would make the "20 hour requirement" an outcome standard that must be met at the time an individual with severe handicaps makes the transition to extended services and that must be maintained for a minimum of 60 consecutive days in order for there to be a successful case closure by the designated State unit. Prior to transition, the regulations would not require any minimum hourly standard of work in supported employment. This change would enable a greater number of individuals with severe handicaps who are presently not able to receive supported employment services because of the work entry requirement to benefit from the program. The second change would clarify the compensation requirement in the definition of "competitive work" by substituting the phrase "compensated consistent with the wage standards provided for in the Fair Labor Standards Act" for the current phase "compensated in accordance with the Fair Labor Standards Act." The existing language is ambiguous and does not clearly address whether the compensation requirement applies if an individual is placed in a job not covered by the Fair Labor Standards Act (FLSA). This phrase has been misinterpreted to apply only if a supported employment placement is made in a job covered by the FLSA or to require placements only in jobs covered by the FLSA. The first interpretation would mean that there would not be any minimum compensation requirements for jobs not covered by the FLSA. The second interpretation would restrict placements to FLSA-covered jobs and would have the effect of limiting rather than expanding competitive employment opportunities for individuals with severe handicaps. Neither of these interpretations was intended when the definition of "competitive work" was developed in 1987. The intent of the language change is to clarify that, irrespective of the applicability of the FLSA to a particular supported employment placement, each individual in supported employment must be compensated consistent with the wage standards prescribed in the FLSA, which require either payment of the minimum wage or payment of a lower wage based on individual productivity.

(7) The definition of "integrated work setting" in proposed § 363.6(c)(2)(ii) would be simplified by eliminating redundant language without making any substantive change. The definition would continue to permit an individual in supported employment to be placed in one of several different types of job sites with varying degrees of integration with non-handicapped individuals, including placement in a small work group of no more than eight individuals with handicaps provided most co-workers are not handicapped or regular contact occurs with non-handicapped individuals in the immediate work setting.

(8) For purposes of clarification, the definitions of "on-going support services" and "traditionally time-limited post-employment services" in proposed § 363.6(c) would be amended and a new definition of the term "extended services" would be added to the regulations. Of the three terms, "on-going support services" is the generic or core term. On-going support services is a required component of supported employment and refers to the full range of services that are needed by individuals in supported employment if they are to engage in competitive work. On-going support services are provided by the designated State unit with funds under this part for a maximum period of 18 months prior to the transition of individuals in supported employment to extended services (the one exception to the 18-month limitation would be the availability of discrete post-transition services) and are also provided, following transition, by one or more extended services providers from other funding sources. When on-going support services are provided by the designated State unit, these services are referred to in the statute and these regulations as "traditionally time-limited post-employment services." When on-going support services are provided after transition, these services are referred to in the statute and these regulations as "extended services." Therefore, traditionally time-limited post-employment services and extended services are simply on-going support services provided at different points in time (during an individual's term of employment in a particular supported employment job placement) by different providers from different funding sources. The NPRM would also remove the requirement that on-going support services for each individual in supported employment, except these with chronic mental illness, must include job skill training services provided at least twice monthly. The proposed regulations would instead require twice-monthly monitoring at the work site of each individual in supported employment, including individuals who are chronically mentally ill, to assess employment stability and, based upon that assessment, the coordination or provision of specific services at or away from the work site to maintain employment stability.

(9) The definition of "transitional employment" in proposed § 363.6(c)(2)(iv) would be amended to clarify that transitional employment is an alternative supported employment model for individuals with chronic mental illness in which the initial job placement is temporary. The revised definition would require that continuous job placements be provided through extended services until the individual achieves job permanency. Individuals with chronic mental illness may receive under the program either a supported employment program of permanent job placement or an transitional employment program of sequential placements until job permanency is achieved.

(10) The provision in § 363.11(e)(2) for an individualized written rehabilitation program (IWRP) to be developed for each individual receiving services under this program would be amended to require periodic monitoring of the progress of each individual in supported employment toward meeting the outcome goal of 20 hours of work per week.

(11) Technical changes would be made in § 363.11(e)(2) and (f) and 363.50(a) to clarify that extended services can be financed by any available funding source, not just funding from State agencies or private, nonprofit organizations.

(12) The NPRM would add two new sections to the regulations. Proposed § 363.54 would establish minimum requirements that each individual in supported employment must meet before a designated State unit can provide for

the transition of the individual to extended services. These requirements are: (1) The individual must be stabilized in the job and working an average of 20 hours per week; and (2) extended services must be immediately available to preclude any hiatus in the provision of services. The purpose of this section is to prevent premature transitioning by designated State units that could jeopardize job placements. proposed § 363.55 would establish a separate rehabilitation standard for individuals in supported employment. Because supported employment uses a "place-train" rehabilitation model rather than the traditional "train-place" model, application of the rehabilitation standard in 34 CFR 361.43 under the State Vocational Rehabilitation Services Program is not useful. That standard is based on maintaining for a minimum of 60 days a job placement that occurs at the end of the rehabilitation process. In supported employment, the job placement occurs at the beginning of the rehabilitation process, and post-placement services are provided to enable the individual to perform competitive work and to ensure continuing job stability. Proposed § 363.55 would require that an individual in supported employment maintain the job placement for 60 days after transition to extended services in order for the case closure to be considered a successful rehabilitation.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NOIR, 477 parties submitted comments on the regulations. The letters included comments from program grantees, individuals, national consumer and provider organizations, State vocational rehabilitation agencies, other State agencies, colleges and universities, and parents of individuals with handicaps. An analysis of the comments and of the proposed changes in the regulations follows.

Major issues are grouped according to subject. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Eligibility, [§ 363.3(a)]

Comments: The Secretary received three comments requesting clarification of the eligibility requirements for the State Supported Employment Services Program. One commenter requested that the Secretary clarify that individuals determined to be appropriate for supported employment must first be determined to be eligible for services under the State Vocational Rehabilitation Services Program. Another commenter stated that individuals appropriate for supported employment could not be determined ineligible for supported employment services if extended services were not available for that individual. This commenter believed that if funding for extended services for a particular individual or group does not exist, this is a resource lack and should not be confused with eligibility for VR services. Another commenter wanted the Secretary to clarify that individuals appropriate for supported employment could not be refused services if funds for the title VI, part C State Supported Employment Services Program have been expended as long as the title I Vocational Rehabilitation Services Program funds were available.

Discussion: The Secretary agrees that the regulations are unclear on the eligibility determination process for the State Supported Employment Services Program. The Secretary wishes to ensure that this program is viewed as supplementary to the State Vocational Rehabilitation Services Program and not as a totally distinct program requiring a separate eligibility determination. As such, the Secretary has determined that as part of the title I eligibility determination process, vocational rehabilitation agencies must consider each individual's potential for supported employment. Other requirements for the State Supported Employment Services Program should be addressed once eligibility has been determined under the State Vocational Rehabilitation Services Program. The Secretary believes that the State Vocational Rehabilitation Services Program, through the use of supported employment, has expanded its eligibility for services to individuals who previously were not referred for services or who were determined to be too severely handicapped for services.

Additionally, the Secretary agrees that individuals appropriate for supported employment who meet the basic eligibility criteria for VR services must be determined eligible even if extended services are not available. The Secretary agrees that if extended services are not available, this is a resource lack and cannot be the basis for determining an individual ineligible for VR services. The availability of extended services is not a regulatory requirement in § 363.3 for determining eligibility for services under this program, but rather a requirement that must be met in the development of an individualized written rehabilitation program before services can be provided (§ 363.11(e)(2)). Since the current regulations are clear on this point, no revision is necessary.

The Secretary also agrees that individuals appropriate for supported employment should be provided traditionally time-limited post-employment services either under title VI, part C or, if these funds are not available, under title I of the State Vocational Rehabilitation Services Program. Since the State Vocational Rehabilitation Services Program permits supported empoyment to be an employment outcome, the Secretary does not believe revising the regulations is warranted.

Changes: The Secretary has added language in § 363.3(a) clarifying that in order to receive vocational rehabilitation services that lead to supported employment as an outcome, individuals must first be determined eligible for the State Vocational Rehabilitation Services Program.

Traditionally Time-Limited Post-Employment Services §§ 363.4(c) and 363.6(c)(3)). On-Going Support Services (§ 363.6(c)(2)(iii)), Job Skill Training (§ 363.4(c)(1)), and Extended Services (§ 363.50(b)(2)).

Comments: The Secretary received many comments on the terms "traditionally time-limited post-employment services," "on-going support services," "job skill training" and "extended services" that indicated confusion and misinterpretation about the distinctions and similarities among these terms. Some commenters did not understand that "post-employment services" under the State Vocational Rehabilitation Services Program (34 CFR part 361) are not the same as traditionally time-limited post-employment services under the State Supported Employment Services Program. Many commenters were unclear about the distinctions between on-going support services, extended services, and traditionally time-limited post-employment services. Some commenters requested that all these services should be provided either at or away from the work site, as appropriate, based upon individually assessed needs. Many of these comments were from individuals concerned about services provided to individuals with mental illnesses. Some commenters wanted job skill training services to be an optional on-going support service under this program rather than a mandatory service for all individuals in supported employment except those with mental illness.

Some commenters believe that the regulations should require that twice-a-month services be provided at the work site—but not necessarily job skill training—for individuals in supported employment. Many commenters made various suggestions that the definition of job skill training services, in order to better serve individuals who are chronically mentally ill, severely physically disabled, or traumatically brain-injured, be expanded to include services such as transportation services, personal care services, communication skills training, counseling services, services to family members, behavior management training, job counseling, medication management, social skills training, assistive technology, case management services, job clubs, work retention clubs, cognitive skills counseling, and travel training.

Discussion: The Secretary believes that the terms "traditionally time-limited post-employment services," "on-going support services," and "extended services" need to be clarified in the regulations. "On-going support services" is an umbrella term that encompasses "traditionally time-limited post-employment services" and "extended services." On-going support services refers to the full range of post-placement services over an unlimited timeframe that are provided to an individual with severe handicaps whose vocational goal is supported employment in order to support and maintain that individual in a particular competitive job placement. On-going support services are provided by the designated State unit for a maximum period of 18 months, unless discrete posttransition services are needed. On-going support services provided by the designated State unit are referred to in the statute and these regulations are traditionally time-limited post-employment services. On-going support services are also provided after an individual has stabilized in a particular job and VR agency support has ceased. These post-transition on-going support services are referred to in the statute and these regulations as extended services. Extended services must be financed by funds other than grant funds under this part.

The Secretary agrees with certain commenters that the requirements to provide twice-a-month job skill training to individuals in supported employment should be removed from the regulations because individuals with severe handicaps have individual needs. Job skill training is one of many support services that may assist an individual with severe handicaps to maintain competitive employment. The secretary believes that individuals in supported employment benefit from a variety of services that will enable them to maintain job stability and that the need for these services should be individually determined. However, the Secretary believes that every individual in supported employment must receive at a minimum twice-monthly monitoring at the work site to assess employment stability and, based upon that assessment, the coordination or provision of other services, as appropriate, either at or away from the work site, to maintain employment stability.

The Secretary also believes that services available under the State Vocational Rehabilitation Services Program, as cited in 34 CFR 361.42, should be available to individuals in supported employment to maintain job stability. The Secretary believes it is unnecessary to list in the regulations all services potentially available to individuals in supported employment since the services available under § 361.42 are so extensive and should meet the needs of individuals in supported employment.

Changes: The Secretary has redefined the terms "on-going support services" and "traditionally time-limited post-employment services" and has added a definition of the term "extended services."

Availability of Post-Transition Services From the VR State Agency

Comments: The Secretary received 241 comments on this issue. All but one commenter requested that the State Supported Employment Services Program permit vocational rehabilitation agencies to provide post-transition services for individuals who have been successfully rehabilitated by the State VR agency. All commenters but one believed that the lack of authority in the regulations to provide these services under this program is discriminatory. Many commenters recommended that the regulations authorize the provision of one or more discrete post-transition services to maintain individuals in employment if these services would not duplicate or replace the services being delivered by the provider of extended services. Some commenters suggested that post-transition services should be allowed for retraining, adjustment to a new job, a reassignment to a new supervisor, or for more intensive job coaching during difficult periods.

Discussion: The Secretary agrees that individuals receiving supported employment services should receive post-transition services as the counterpart to traditional post-employment services that are available for other VR clients. The Secretary believes that post-transition services should be discrete, individually determined, and not duplicative of services provided during the extended services phase of supported employment. The availability of post-transition services would be the one exception to the 18-month maximum period of VR agency support under the State Supported Employment Services Program.

Changes: The Secretary proposes revision of § 363.4 (authorized services) by adding a new paragraph (c)(3), which permits the provision of discrete post-transition services that are unavailable from the extended services provider and are necessary to maintain a job placement.

Supported Employment and Transitional Employment for Individuals Who Are Chronically Mentally Ill, (§§ 383.6(c)(1)(ii) and 383.6(c)(2)(iv)

Comments: The Secretary received many comments on supported employment services for individuals who are mentally ill. A few commenters requested that transitional employment be made available to disability groups other than individuals who are mentally ill. Eight commenters did not want transitional employment to be used by other disability groups. Thirty-one commenters stated that some VR agencies refused to fund transitional employment and wanted VR agencies to accept transitional employment as a successful closure within the VR system. Several commenters recommended that if transitional employment is used for individuals with mental illnesses, the provider of extended services must ensure that transitional employment placements are continuous until job permanency is achieved.

Discussion: The current regulatory definition of "supported employment" permits individuals who are mentally ill to receive either supported employment or transitional employment. The Secretary believes that individuals who are mentally ill, whether in supported employment or transitional employment, must be provided a minimum of twice-monthly monitoring at the work site to assess employment stability and, based upon that assessment, provided appropriate services to maintain employment stability. Additionally, the Secretary believes that transitional employment, under these regulations, should be used exclusively for individuals who are mentally ill, as this model was developed for this disability

group. The Secretary also believes that transitional employment should provide individuals with continuous employment until job permanence is achieved. Without this requirement, the Secretary believes that individuals who are mentally ill will not be assured of a comprehensive vocational rehabilitation program. The Secretary also wishes to point out that under the statute and current program regulations transitional employment is included within the definition of supported employment and is an authorized supported employment model. Thus, transitional employment must be an available supported employment model within each State's program for those individuals with mental illness for whom the State agency has determined this is appropriate, and can be the basis for a successful case closure. Since the regulations are clear on this point, regulatory revision is not needed.

Change: The Secretary proposes changing the definition of "transitional employment" to clarify that transitional employment is an alternative supported employment model for individuals with chronic mental illness in which the initial job placement is temporary and to require continuing sequential job placements through extended services until the individual achieves job permanency.

20 Hour Work Requirement in Competitive Work, (§ 363.6(c)(2)(i))

Comments: Three hundred and seventy-eight comments were received concerning the current requirement that individuals in supported employment work an average of 20 hours per week per pay period at the time of job placement. Eighteen commenters wanted no change in this requirement. Two hundred and three commenters preferred no hourly work standard at any time during the rehabilitation process. Ninety-nine commenters preferred that the VR agency rehabilitate individuals in a supported employment job who are capable of achieving a goal of 20 hours of work by the time of case closure. Fifty-eight commenters requested a lower work standard of either 5, 10, 12, or 15 hours of work per week at the time of placement to replace the 20 hour standard.

Discussion: The Secretary agrees that the average of 20 hours of work per week per pay period at the time of job placement is too restrictive a standard for some individuals with severe handicaps and that the standard has had the unintended effect of excluding individuals from the program who have the potential to increase their work hours up to that standard. The 20 hour standard denies persons with severe disabilities the opportunity to phase into work experience on a less than half-time basis. However, the Secretary believes an hourly work requirement of 20 hours per week is a reasonable standard at the time an individual makes the transition from VR agency support to extended services support as this standard ensures that the State Supported Employment Services Program provides substantial employment opportunities for individuals with severe handicaps.

Changes: The Secretary proposes that in § 363.6(c)(2)(i) the definition of "competitive work" be changed. The Secretary proposes that an average of 20 hours of work per week be an outcome standard that must be achieved at the time of transition to extended services. Prior to transition, the Secretary proposes no minimum hourly standard of work in supported employment.

Integrated Work Setting, (§ 363.6(c)(2)(ii))

Comments: Thirty-five comments were received requesting clarification or redefinition of "integrated work setting." Several commenters requested an increase in the maximum number of individuals with handicaps allowed in a work group. Ten commenters requested that the maximum of eight individuals with handicaps in a work group be expanded to twelve. Three commenters wanted no change. A few commenters noted that some State VR agencies allow only one work group of eight within any employment setting and believed that this was overly restrictive.

Discussion: The Secretary agrees that the definition of "intergrated work setting" needs minor clarification, but does not support any substantive change in the requirements of this term. The Secretary believes that the requirement of no more than eight in a work group should not be increased as larger work groups of individuals with handicaps would not provide adequate integration of individuals with handicaps with individuals who are not handicapped. The current regulations do not limit the number of work groups of up to eight individuals with handicaps that can exist within an employment setting as long as most of the work force is non-handicapped and integration exists.

Changes: The Secretary has clarified the meaning of "integrated work setting" by combining the integration options in paragraphs (A) and (B) and by simplifying the language throughout the definition. However, no substantive changes have been made in this definition.

Definition of Severely Handicapped

Comments: Five comments were received requesting that the Secretary clarify that supported employment is a program intended for individuals with severe handicaps. A few of these commenters requested that the Secretary establish a stronger definition of individuals with severe handicaps for this program.

Discussion: The Secretary confirms that the State Supported Employment Services Program is intended to serve only individuals with severe handicaps—including those with the most severe handicaps as stated in current regulations in § 363.3(a). Section 7(15)(A) of the Rehabilitation Act defines "individual with severe handicaps," and this definition applies to the State Supported Employment Services program. There is no legal authority to adopt a different definition.

Changes: None.

Eighteen-Month Limit

Comments: Thirty-five comments were received related to the 18-month limit on the provision of traditionally time-limited post-employment services by the designated State unit. Most commenters felt that this limitation was arbitrary and should be removed. One commenter, however, wanted no more than 18 months of service provided under this program by the VR agency. Several commenters recommended that the 18-month period should be a minimum rather than a maximum length of time for provision of traditionally time-limited post-employment services by the designated State unit. A few commenters felt that the length of service should be based on counselor judgment. Several commenters felt that the VR agency should not be allowed to provide for the transition of a person to extended services until job stability is achieved.

Six commenters stated that VR agency places arbitrary limits on the expenditure of dollars for supported employment or places limits of the hours of job coaching that are provided during the 18-month period.

Discussion: The authorizing statute of the State Supported Employment Services Program provides for time-limited post-placement services by the VR agency. Because of this provision, the Secretary believes "time-limited" must be specified in the regulations to ensure consistency among States. The 18-month period was selected as a reasonable period for VR involvement. Current data from VR agencies reveals that most individuals make the

transition to extended services prior to the 18-month period. The Secretary continues to believe that a maximum of 18 months of post-placement services by the designated State unit is adequate and does not require regulatory change. However, the Secretary does believe that services provided by the VR agency during the 18-month period should be comprehensive an individualized if this program is to succeed in serving individuals with the most severe disabilities. The Secretary encourages designated State units to provide services of a length, intensity, and cost that adequately address the needs of each individual prior to transition to extended services.

Changes: None.

Reopening Cases

Comments: Six comments were received that suggested that individuals who were previously rehabilitated by VR agencies into supported employment should be allowed to reapply for services and, if appropriate, have new cases opened. The commenters believed that due to the nature of the long-term support of this program, individuals will be excluded by VR agencies from reapplying for services. Job losses and underemployment were proposed as reasons for opening new cases.

Discussion: The Secretary confirms that VR agencies may open cases on individuals who have lost jobs or are in need of job upgrades if these individuals meet the eligibility criteria for the State VR Services Program and the other requirements that apply to receipt of supported employment services. However, the Secretary does not believe this issue requires regulatory revision.

Changes: None.

Note: Supported employment services are also provided under the State Vocational Rehabilitation Services Program (34 CFR part 361) and the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects (34 CFR part 380). Therefore, any regulatory revisions in part 363 of requirements that are common to these two other programs would also result in changes to parts 361 and 380.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are public and private nonprofit organizations providing extended services in supported employment to individuals with severe handicaps. However, the regulations would not have a significant economic impact on the organizations affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 363.10, 363.11, 363.50, and 363.52 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

State vocational rehabilitation agencies are eligible for grants under these proposed regulations. The Department needs and uses the information collected to monitor the State agency's compliance with requirements of the law and to report on the status of individuals served by the program. Annual public reporting burden for this collection of information is estimated to average 2 hours per response for 84 respondents, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3323, Mary E. Switzer Building, 330 C Street, SW., Washington DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 363

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Supported employment Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.187 State Supported Employment Services Program)

Dated: September 25, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 363 to read as follows:

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

Subpart A—General

Sec.

363.1 What is the State Supported Employment Services Program?
363.2 Who is eligible for an award?
363.3 Who is eligible for services?
363.4 What are the authorized activities under a State Supported Employment Services grant?
363.5 What regulations apply?
363.6 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

363.10 What documents must a State submit to receive a grant?
363.11 What information and assurances must be included in the State plan supplement?

Subpart C—How does the Secretary Make a Grant?

363.20 How does the Secretary allocate funds?
363.21 How does the Secretary reallocate funds?

Subparts D-E—[Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

363.50 What collaborative agreements must the State develop?
363.51 What are the allowable administrative costs?
363.52 What are the information collection and reporting requirements?
363.53 What special conditions apply to services and activities under this program?
363.54 What requirements must a State meet before it provides for the transition of an individual to extended services?
363.55 What are the requirements for successfully rehabilitating an individual in supported employment?

Authority: 29 U.S.C. 795j-q, unless otherwise noted.

Subpart A—General

§ 363.1 What is the State Supported Employment Services Program?

Under the State Supported Employment Services Program, the Secretary provides grants to assist States in developing and implementing programs of supported employment services for individuals with severe handicaps.

(Authority: 29 U.S.C. 795j)

§ 363.2 Who is eligible for an award?

Any State is eligible for an award under this program.

(Authority: 29 U.S.C. 795m(a))

§ 363.3 Who is eligible for services?

A State may provide services under this program to any individual who—

(a) Has been determined to meet the eligibility criteria for the State Vocational Rehabilitation Services Program in 34 CFR 361.31;

(b) Has severe handicaps, and for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of those handicaps; and

(c) Has been determined by an evaluation of rehabilitation potential, as defined in section 7(5) of the Act, to have—

(1) The ability or potential to engage in a training program leading to supported employment;

(2) A need for on-going support services in order to perform competitive work; and

(3) The ability to work in a supported employment setting.

(Authority: 29 U.S.C. 795k)

§ 363.4 What are the authorized activities under a State Supported Employment Services grant?

Under this program, the following activities are authorized:

(a) Evaluation of the rehabilitation potential for supported employment of individuals with severe handicaps. Any evaluation must be supplementary to an evaluation of rehabilitation potential done under 34 CFR part 361 and can be provided only after an individual's eligibility for the State Vocational Rehabilitation Services Program has been determined.

(b) Development of and placement in jobs for individuals with severe handicaps.

(c) Provision of traditionally time-limited post-employment services that are needed to support individuals with severe handicaps in employment, such as—

(1) Intensive job skill training and other services specified in 34 CFR 361.42 in order to maintain job stability; and

(2) Follow-up services, including regular contact with employers, trainees with severe handicaps, parents, guardians or other representatives of trainees, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; and

(3) Discrete post-transition services that are unavailable from an extended services provider and that are necessary to maintain the job placement.

(Authority: 29 U.S.C. 795n)

§ 363.5 What regulations apply?

The following regulations apply to the State Supported Employment Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (State-Administered Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 363.

(c) The following regulations in 34 CFR part 361 (The State Vocational Rehabilitation Services Program): §§ 361.31; 361.32; 361.33; 361.34; 361.35; 361.39; 361.40; 361.41; 361.42; 361.47(a); 361.48; and 361.49.

(Authority: 29 U.S.C. 795j and 711(c))

§ 363.6 What definitions apply?

(a) *Definitions in 34 CFR part 361.* The following terms used in this part are defined in 34 CFR 361.6:

Act
Designated state unit
Individual with handicaps
Individual with severe handicaps
State plan

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Fiscal year
Nonprofit
Private
Secretary
State

(c) *Other Definitions.* The following definitions also apply to this part:

(1) As used in this part, *Supported Employment* means—

(i) Competitive work in an integrated work setting with on-going support services for individuals with severe handicaps for whom competitive employment—

(A) Has not traditionally occurred; or

(B) Has been interrupted or intermittent as a result of severe handicaps; or

(ii) Transitional employment for individuals with chronic mental illness; and

(2) As used in the definition of *supported employment*—

(i) *Competitive work* means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week for each pay period at the time an individual makes the transition to extended services, and for which an individual is compensated consistent with the wage standards provided for in the Fair Labor Standards Act;

(ii) *Integrated work setting* means job sites where—

(A) (*1*) Most co-workers are not handicapped; and

(*2*) An individual with a severe handicap is either part of a work group with non-handicapped co-workers or is part of a small work group of no more than eight individuals with handicaps; or

(B) If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals with handicaps, an individual with a severe handicap has regular contact with non-handicapped individuals, other than personnel

providing on-going support services, in the immediate work setting.

(iii) *On-going support services* means services that are—

(A) Needed to support and maintain an individual with severe handicaps in supported employment;

(B) Based on a determination by the designated State unit of the individual's needs as specified in an individualized written rehabilitation program; and

(C) Furnished by the designated State unit from the time of job placement until transition to extended services, except as provided in § 363.4(c)(3) and, following transition, by one or more extended services providers throughout the individual's term of employment in a particular job placement. On-going support services must include, at a minimum, twice-monthly monitoring at the work site of each individual in supported employment to assess employment stability and, based upon that assessment, the coordination or provision of specific services, at or away from the work site, that are needed to maintain employment stability.

(iv) *Transitional employment* means competitive work in an integrated work setting with on-going support services for individuals with chronic mental illness. In transitional employment, the provision of extended services must include continuous job placements until job permanency is achieved.

(3) *Traditionally time-limited post-employment services* means on-going support services provided by the designated State unit with funds received under this part for a period not to exceed 18 months before an individual with severe handicaps makes the transition to extended services, except as provided in § 363.4(c)(3).

(4) *Extended services* means on-going support services provided by a State agency, a private non-private organization or any other appropriate resource, from funds other than funds received under this part, after an individual with severe handicaps has made the transition from VR State agency support.

(Authority: 29 U.S.C. 706(18), 711(c), and 795j)

Subpart B—How Does a State Apply for a Grant?

§ 363.10 What documents must a State submit to receive a grant?

To receive a grant under this part, a State must submit to the Secretary, as part of the State plan under 34 CFR part 361, a State plan supplement that meets the requirements of § 363.11.

(Authority: 29 U.S.C. 795l(c) and 795m(a))

§ 363.11 What information and assurances must be included in the State plan supplement?

Each State plan supplement must—

(a) *Designated State agency.* Designate the State unit or units for vocational rehabilitation services identified in the State plan submitted under 34 CFR part 361 as the State agency or agencies to administer this program;

(b) *Results of needs assessment.* Summarize the results of the needs assessment of individuals with severe handicaps conducted under title I of the Act if that assessment identifies the need for supported employment services. The results of the needs assessment must address the coordination and use of information within the State relating to section 618(b)(3) of the Individuals with Disabilities Education Act;

(c) *Quality, scope, and extent of services.* Describe the quality, scope, and extent of supported employment services to be provided to individuals with severe handicaps under this program. The description must address the timing of the transition to extended services referred to in § 363.50(b)(2);

(d) *Distribution of funds.* Describe the State's goals and plans with respect to the distribution of funds received under § 363.20;

(e) *Assurances.* Provide assurances that—

(1) An evaluation of rehabilitation potential, as defined in section 7(5) of the Act, is provided under 34 CFR part 361, and, if necessary, a supplementary evaluation under this part for each individual with severe handicaps who receives services under this program is provided;

(2) An individualized written rehabilitation program as specified in 34 CFR 361.40 and 361.41 will be developed, either under this part or under 34 CFR part 361, that—

(i) Specifies the services to be provided to each individual served under this program, including a description of the extended services needed, an identification of the State, Federal, or private programs or other resources that will provide the continuing support, and a description of the basis for determining that continuing support is available; and

(ii) Provides for periodic monitoring to ensure that each individual with severe handicaps is making satisfactory progress toward meeting the 20 hours per week work requirement by the time of transition to extended services; and

(3) Services provided to individuals under this program will be coordinated with the individualized written rehabilitation program or education plan as required under section 102 of the Act, section 123 of the Developmental Disabilities Act of 1984, and sections 612(4) and 614(5) of the Individuals with Disabilities Education Act;

(4) The State will conduct periodic reviews of the progress of individuals assisted under this program to determine whether services provided to those individuals should be continued, modified, or discontinued;

(5) The designated State agency or agencies will expend no more than five percent of the State's allotment for administrative costs of carrying out this program;

(6) The State will make maximum use of services from public agencies, private nonprofit organizations, and other appropriate resources in the community to carry out this program;

(7) The public participation requirements of section 101(a)(23) of the Act are met;

(f) *Collaboration.* Demonstrate evidence of collaboration by and funding from relevant State agencies, private nonprofit organizations, or other sources to provide on-going support services following the termination of traditionally time-limited post-employment services under this part; and

(g) *Other information.* Contain any other information and be submitted in the form and in accordance with the procedures that the Secretary may require.

(Authority: 29 U.S.C. 795m)

Subpart C—How Does the Secretary Make a Grant?

§ 363.20 How does the Secretary allocate funds?

The Secretary allocates funds under this program in accordance with section 633(a) of the Act.

(Authority: 29 U.S.C. 7951(c))

§ 363.21 How does the Secretary reallocate funds?

The Secretary reallocates funds in accordance with section 633(b) of the Act.

(Authority: 29 U.S.C. 7951(b))

Subparts D-E—[Reserved]

Subpart F—What Post-Award Conditions Must be Met by a State?

§ 363.50 What collaborative agreements must the State develop?

(a) A designated State unit must enter into one or more written cooperative agreements or memoranda of understanding with other appropriate

State agencies, private nonprofit organizations, and other available funding sources to ensure collaboration in a plan to provide supported employment services to individuals with severe handicaps.

(b) A cooperative agreement or memorandum of understanding must, at a minimum, specify the following:

(1) The traditionally time-limited post-employment services to be provided by the designated State unit with funds received under this part.

(2) The extended services to be provided by relevant State agencies, private nonprofit organizations, or other sources following the termination of traditionally time-limited post-employment services under this part.

(3) The estimated funds to be expended by the participating party or parties in implementing the agreement or memorandum.

(4) The projected number of individuals with severe handicaps who will receive supported employment services under the agreement or memorandum.

(Authority: 29 U.S.C. 795m(b)(4) and 795n(b))

§ 363.51 What are the allowable administrative costs?

(a) *Administrative costs—general.* Expenditures are allowable for the following administrative costs:

(1) Administration of the State plan supplement for this program.

(2) Planning, program development, and personnel development to implement a system of supported employment services.

(3) Monitoring, supervision, and evaluation of this program.

(4) Technical assistance to other State agencies, private nonprofit organizations, and businesses and industries.

(b) *Limitation on administrative costs.* Not more than five percent of a State's allotment may be expended for administrative costs for carrying out this program.

(Authority: 29 U.S.C. 7951(c) and 795m(b)(5))

§ 363.52 What are the information collection and reporting requirements?

(a) A State shall collect and report information as required under section 13 of the Act for each individual with severe handicaps served under this program.

(b) The State shall collect and report separately information for——

(1) Supported employment clients served under this program; and

(2) Supported employment clients served under 34 CFR part 361.

(Authority: 29 U.S.C. 712 and 795o)

§ 363.53 What special conditions apply to services and activities under the program?

Each grantee shall coordinate the services provided to an individual under this part and under 34 CFR part 361 to ensure that the services are complementary and not duplicative.

(Authority: 29 U.S.C. 795n and q)

§ 363.54 What requirements must a State meet before it provides for the transition of an individual to extended services?

A designated State unit must provide for the transition of an individual with severe handicaps to extended services no later than 18 months after placement in supported employment and only if the individual is working an average of 20 hours per week per pay period, the individual is stabilized in the job, and extended services are available and can be provided without a hiatus in services.

(Authority: 29 U.S.C. 795n and 711(c))

§ 363.55 What are the requirements for successfully rehabilitating an individual in supported employment?

An individual with severe handicaps who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for 60 days after making the transition to extended services.

(Authority: 29 U.S.C. 711(c))

[FR Doc. 91-27280 Filed 11-12-91; 8:45 am]
BILLING CODE 4000-01-M

federal register

Wednesday
November 13, 1991

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact for control of Class III video games of chance on the White Earth Band of Chippewa Reservation in Minnesota between the White Earth Band of Chippewa and the State of Minnesota executed on May 15, 1991.

DATES: This action is effective November 13, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC 20240 (202) 208–7445.

Dated: November 8, 1991.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 91–27464 Filed 11–12–91; 10:31 am]

BILLING CODE 4310–02–M

federal register

Wednesday
November 13, 1991

Part VI

The President

Notice of November 12, 1991—
Continuation of Iran Emergency

Federal Register

Part VI

The President

Notice of November 12, 1957—
Continuation of Iran Emergency

Federal Register
Vol. 56, No. 219
Wednesday, November 13, 1991

Presidential Documents

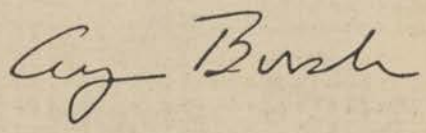
Title 3—

The President

Notice of November 12, 1991

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**, most recently on November 9, 1990. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1991. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 12, 1991.

[FR Doc. 91-27511
Filed 11-12-91; 11:51 am]
Billing code 3195-01-M

Editorial note: For the President's message to Congress on the continuation of the emergency, see issue No. 46 of the *Weekly Compilation of Presidential Documents.*

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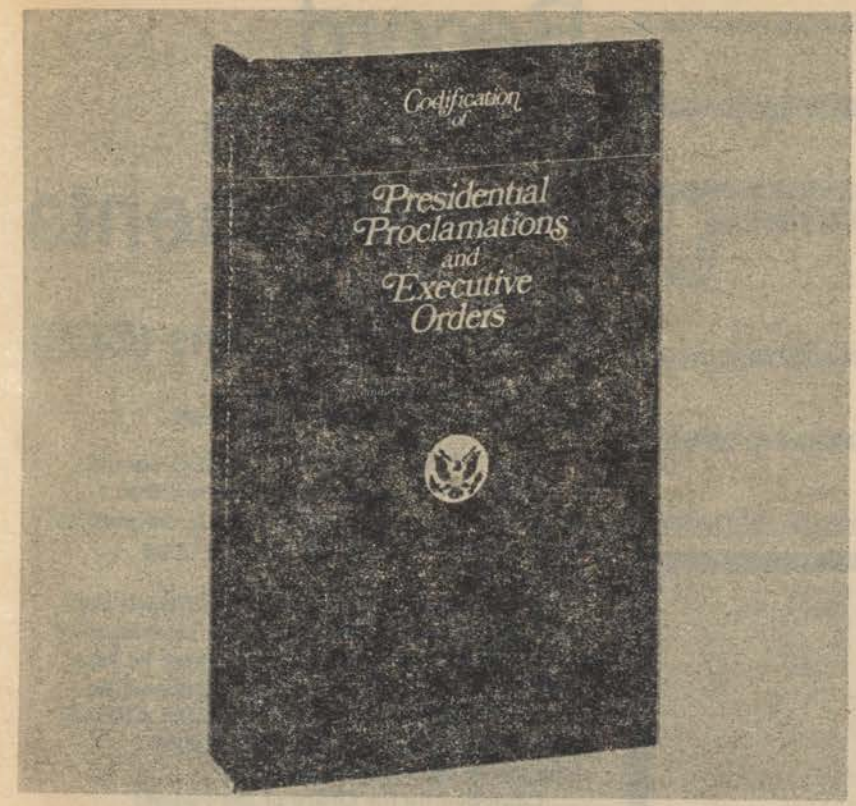

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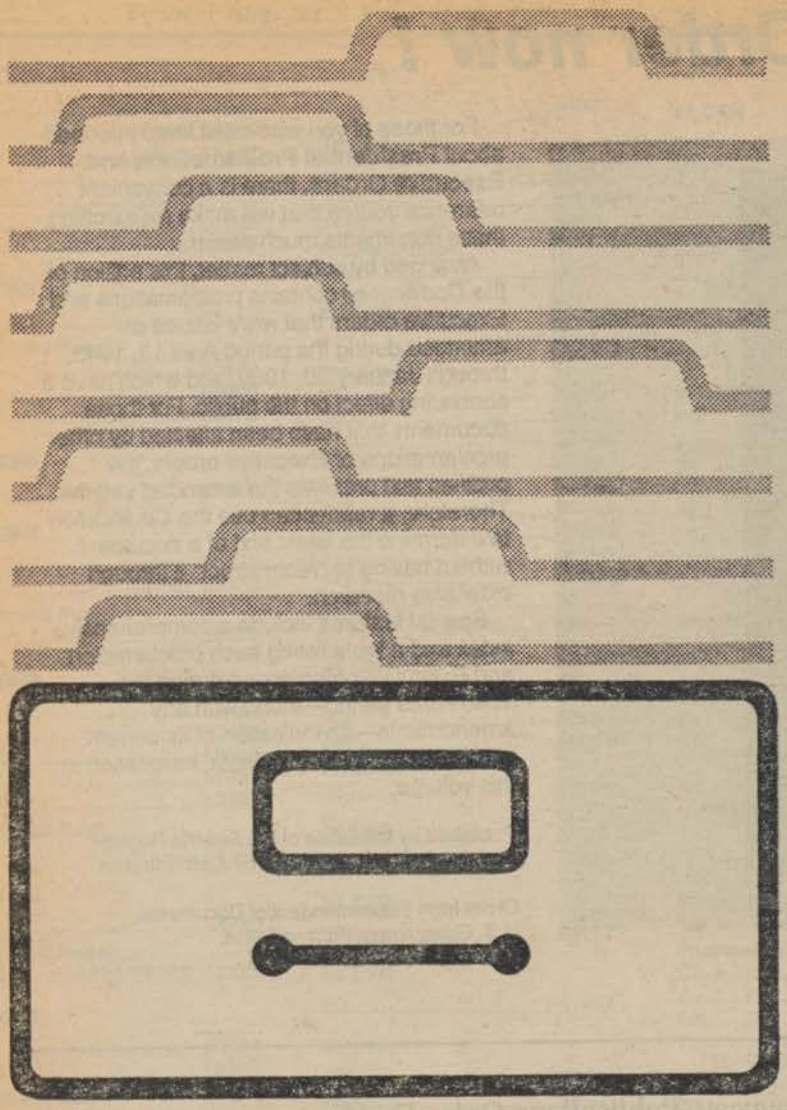

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in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1991

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